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**CHINO BASIN WATERMASTER**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN BERNARDINO

10 CHINO BASIN MUNICIPAL WATER  
11 DISTRICT,

12 Plaintiff,

13 v.

14 CITY OF CHINO, ET AL.,

15 Defendants.

**Case No. RCV RS 51010**

[Assigned for All Purposes to the  
Honorable Gilbert Ochoa]

**DECLARATION OF PETER KAVOUNAS  
IN SUPPORT OF CHINO BASIN  
WATERMASTER'S OPPOSITION TO  
MOTION CHALLENGING  
WATERMASTER'S BUDGET ACTION TO  
FUND UNAUTHORIZED CEQA REVIEW**

Date: October 14, 2022

Time: 9:00 a.m.

Dept: S24

[Filed concurrently herewith: Opposition to  
Motion Challenging Watermaster's Budget  
Action to Fund Unauthorized CEQA Review;  
Declaration of Joseph S. Joswiak; Request for  
Judicial Notice; Objections to Declaration of  
Courtney Jones]

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
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**DECLARATION OF PETER KAVOUNAS**

I, Peter Kavounas, declare:

1. I currently serve as the General Manager of the Chino Basin Watermaster (Watermaster). I have served in this capacity since September 4, 2012. I have personal knowledge of the facts stated in this declaration, except where stated on information and belief, and if called as a witness, I could and would competently testify to them under oath. I make this declaration in support of Watermaster’s Opposition to Motion Challenging Watermaster’s Budget Action to Fund Unauthorized CEQA Review.

2. As the General Manager of Watermaster, I am intimately familiar with the actions taken by the Pool Committees, Advisory Committee, and the Watermaster Board, and the directives to staff from the Board. My role as General Manager includes attending all Pool Committee, Advisory Committee, and Watermaster Board meetings.

3. Watermaster is an arm of the Court, administering the Court’s 1978 Judgment. In September 2012, the Court ordered that the Restated Judgment, incorporating all amendments since 1978, shall serve as the official and legally operative copy of the 1978 Judgment in this matter. The Court has subsequently ordered additional amendments to the Judgment, though a further restatement has not been completed. Watermaster maintains copies of the Court’s orders in this case and agreements among the parties as part of its function. A true and correct copy of the 2012 Restated Judgment is attached hereto as **Exhibit A**.

4. A true and correct copy of Chino Basin Municipal Water District’s Post-Trial Memorandum, filed July 12, 1978 in this matter is attached hereto as **Exhibit B**.

5. A true and correct copy of the Court’s February 19, 1998 Order appointing a nine-member Board to serve as Interim Watermaster between March 1, 1998 and June 30, 2000 and directing the Interim Watermaster to develop and submit the Optimum Basin Management Plan (OBMP) is attached hereto as **Exhibit C**. The 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 Board incorporated in that February 19, 1998 Order is included as part of Exhibit C.

1           6.       A true and correct copy of the Court’s December 28, 2018 Order extending the  
2 appointment of the Board to February 10, 2024 is attached hereto as **Exhibit D**.

3           7.       Presently, the voting power of each of the three Pools in the Advisory Committee  
4 are as follows: the Appropriative Pool is allocated 75 votes, the Overlying (Agricultural) Pool 20  
5 votes, and the Overlying (Non-Agricultural) Pool 5 votes.

6           8.       A true and correct copy of the present version of Watermaster’s Rules and  
7 Regulations, approved by this Court on April 8, 2022, is attached hereto as **Exhibit E**.

8           9.       A true and correct copy of the Court’s November 18, 1999 Order in this matter  
9 regarding the California Environmental Quality Act’s application to the OBMP is attached hereto  
10 as **Exhibit F**.

11          10.       A true and correct copy of the Peace Agreement is attached hereto as **Exhibit G**.  
12 The 2000 OBMP Implementation Plan is included in Exhibit G as Attachment B thereto.

13          11.       A true and correct copy of the Peace II Agreement is attached hereto as **Exhibit H**.

14          12.       A true and correct copy of the Court’s December 21, 2007 Order Concerning Motion  
15 for Approval of Peace II Documents in this matter is attached hereto as **Exhibit I**.

16          13.       IEUA has served as lead agency for environmental review related to the Peace  
17 Agreement and OBMP Implementation Plan in 2000, certified a Subsequent Environmental Impact  
18 Report in regard to the Peace II Agreement in 2010, certified an Addendum to the 2000 PEIR  
19 certifying that a temporary increase in storage would have no undesirable results in 2017, and in  
20 2021, certified a second Addendum to the 2000 PEIR regarding environmental coverage of the  
21 Local Storage Limitation Solution.

22          14.       Watermaster updated the OBMP in 2020 and began a facilitated process for the  
23 negotiation of an update to the OBMP Implementation Plan, holding an OBMP Implementation  
24 Plan Drafting Orientation Session on March 2, 2020 and an OBMP Implementation Plan Drafting  
25 Session #1 on March 16th, 2020. On March 26, 2020, MVWD requested that Watermaster pause  
26 the process to allow Parties to address the COVID-19 pandemic.

27          15.       IEUA prepared a draft Subsequent EIR (SEIR) for the 2020 OBMP in 2020 that  
28 analyzed the anticipated OBMP implementation projects and that would facilitate the parties’

1 eligibility for grant funding for the activities reviewed in that SEIR. None of the Moving Parties  
2 challenged Watermaster's budgeting process or the manner in which Watermaster's technical  
3 consultant and legal counsel participated in the development and review of the 2020 draft SEIR.  
4 The budget amendment for the CEQA work for the 2020 draft SEIR was unanimously  
5 recommended for approval by the Appropriative Pool Committee and unanimously approved by  
6 the Advisory Committee.

7 16. On the morning of the meeting at which the IEUA Board was to consider the item,  
8 Ontario transmitted a letter to IEUA alleging deficiencies in the draft SEIR. The IEUA Board of  
9 Directors did not certify the draft SEIR.

10 17. Following dialogue with the Board and parties, Watermaster included in its draft FY  
11 2022/23 Budget funding for activities necessary to complete the environmental review of the 2020  
12 OBMPU and to assist the parties in coming to an agreement regarding the amendment of the OBMP  
13 Implementation Plan.

14 18. The Watermaster Board received a presentation at its July 28, 2022 regular meeting  
15 regarding the 2000 and 2020 OBMP and took action to: (1) Direct staff to meet with all interested  
16 stakeholders, including the Four Appropriators, to evaluate the current status of the 2020 OBMP,  
17 consider changes in circumstances, and gather stakeholder input; and (2) Using input from the  
18 meetings with stakeholders, develop a project description for the 2020 OBMP PEIR and proceed  
19 with the effort within the approved budget. A true and correct copy of the minutes of the  
20 Watermaster Board's July 28, 2022 meeting is attached hereto as **Exhibit J**.

21 19. At the Board's August 25, 2022 meeting, the Board directed the Watermaster  
22 General Manager to explore the interest of the parties in Watermaster facilitation of OBMP project  
23 level implementation.

24 20. Pursuant to the Board's July 28, 2022 action, Watermaster held a workshop on  
25 September 1, 2022 to discuss the 2020 OBMP environmental review project description and  
26 process. Following the September 1, 2022 workshop, a CEQA consultant began preparing an  
27 updated project description incorporating feedback received.

28 21. IEUA has not made any determination<sup>4</sup> as to the form of the CEQA document for the

1 CEQA review contemplated in the FY 2022/23 Budget, or how it might relate to the draft SEIR  
2 prepared in 2020.

3 22. Watermaster staff has contacted many parties to the Peace Agreement and all have  
4 agreed to participate in facilitated negotiations regarding potential OBMP Implementation Plan and  
5 Peace Agreement amendments.

6 23. The Chino Basin Project (“CBP”) is an IEUA project to address local water  
7 challenges involving water exchange, recycled water projects, and new infrastructure and upgrades.  
8 IEUA prepared and certified a PEIR for the CBP separate from CEQA review of the 2020 OBMPU.

9 24. A true and correct copy of the minutes of the May 19, 2022 regular meeting of the  
10 Advisory Committee is attached hereto as **Exhibit K**.

11 25. A true and correct copy of the staff report for Business Item II.C of the May 26,  
12 2022 regular meeting of the Watermaster Board is attached hereto as **Exhibit L**.

13 26. A true and correct copy of the minutes of the May 26, 2022 regular meeting of the  
14 Watermaster Board is attached hereto as **Exhibit M**.

15 27. A true and correct copy of the staff report for Business Item I.C of the July 28, 2022  
16 regular meeting of the Watermaster Board is attached hereto as **Exhibit N**.

17  
18 I declare under penalty of perjury under the laws of the State of California that the foregoing  
19 is true and correct.

20 Dated this 3<sup>rd</sup> day of October, 2022, at Rancho Cucamonga, California.

21  
22  
23   
24 PETER KAVOUNAS  
25  
26

27 24715543

# Exhibit A

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7 Attorneys for Plaintiff

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

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

No. RCV 51010<sup>1</sup>

14  
15 v.

16 CITY OF CHINO, et al.

Defendants  
17

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20 RESTATED JUDGMENT  
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27 <sup>1</sup> Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order  
of the Court and assigned new case number RCV 51010.  
28

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

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

No. RCV 51010<sup>2</sup>

14 v.

15 CITY OF CHINO, et al.

16 Defendants

JUDGMENT

17  
18  
19 I. INTRODUCTION

20 1. Pleadings, Parties and Jurisdiction. The complaint herein was filed on January 2, 1975,  
21 seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution. A first  
22 amended complaint was filed on July 16, 1976. The defaults of certain defendants have been entered,  
23 and certain other defendants dismissed. Other than defendants who have been dismissed or whose  
24 defaults have been entered, all defendants have appeared herein. By answers and order of this Court,  
25

26  
27 <sup>2</sup> Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order  
of the Court and assigned new case number RCV 51010.

1 the issues have been made those of a full inter se adjudication between the parties. This Court has  
2 jurisdiction of the subject matter of this action and of the parties herein.

3 2. Stipulation For Judgment. Stipulation for entry of judgment has been filed by and on  
4 behalf of a majority of the parties, representing a majority of the quantitative rights herein adjudicated.

5 3. Trial: Findings and Conclusions. Trial was commenced on December 16, 1977, as to the  
6 non-stipulating parties, and findings of fact and conclusions of law have been entered disposing of the  
7 issues in the case.

8 4. Definitions. As used in this Judgment, the following terms shall have the meanings  
9 herein set forth:

10 (a) Active Parties. All parties other than those who have filed with Watermaster a  
11 written waiver of service of notices, pursuant to Paragraph 58.

12 (b) Annual or Year -- A fiscal year, July 1 through June 30, following, unless the  
13 context shall clearly indicate a contrary meaning.

14 (c) Appropriative Right -- The annual production right of a producer from the Chino  
15 Basin other than pursuant to an overlying right.

16 (d) Basin Water -- Ground water within Chino Basin which is part of the Safe Yield,  
17 Operating Safe Yield, or replenishment water in the Basin as a result of operations under the  
18 Physical Solution decreed herein. Said term does not include Stored Water.

19 (e) CBMWD -- Plaintiff Chino Basin Municipal Water District.

20 (f) Chino Basin or Basin -- The ground water basin underlying the area shown as  
21 such on Exhibit "B" and within the boundaries described in Exhibit "K".

22 (g) Chino Basin Watershed -- The surface drainage area tributary to and overlying  
23 Chino Basin.

24 (h) Ground Water -- Water beneath the surface of the ground and within the zone of  
25 saturation, i.e., below the existing water table.  
26  
27  
28

1 (i) Ground Water Basin -- An area underlain by one or more permeable formations  
2 capable of furnishing substantial water storage.

3 (j) Minimal Producer -- Any producer whose production does not exceed **ten** acre-  
4 feet per year.<sup>3</sup>

5 (k) MWD -- The Metropolitan Water District of Southern California.

6 (l) Operating Safe Yield -- The annual amount of ground water which Watermaster  
7 shall determine, pursuant to criteria specified in Exhibit "I", can be produced from Chino Basin by  
8 the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

9 (m) Overdraft -- A condition wherein the total annual production from the Basin  
10 exceeds the Safe Yield thereof.

11 (n) Overlying Right -- The appurtenant right of an owner of lands overlying Chino  
12 Basin to produce water from the Basin for overlying beneficial use on such lands.

13 (o) Person. -- Any individual, partnership, association, corporation, governmental  
14 entity or agency, or other organization.

15 (p) PVMWD -- Defendant Pomona Valley Municipal Water District.

16 (q) Produce or Produced -- To pump or extract ground water from Chino Basin.

17 (r) Producer -- Any person who produces water from Chino Basin.

18 (s) Production -- Annual quantity, stated in acre feet, of water produced.

19 (t) Public Hearing -- A hearing after notice to all parties and to any other person  
20 legally entitled to notice.

21 (u) Reclaimed Water -- Water which, as a result of processing of waste water, is  
22 suitable for a controlled use.

23 (v) Replenishment Water -- Supplemental water used to recharge the Basin  
24 pursuant to the Physical Solution, either directly by percolating the water into the Basin or  
25

26  
27 <sup>3</sup> Order dated September 27, 2001.  
28

1 indirectly by delivering the water for use in lieu of production and use of safe yield or Operating  
2 Safe Yield.

3 (w) Responsible Party — The owner, co-owner, lessee or other person designated by  
4 multiple parties interested in a well as the person responsible for purposes of filing reports  
5 hereunder.

6 (x) Safe Yield — The long-term average annual quantity of ground water (excluding  
7 replenishment or stored water but including return flow to the Basin from use of replenishment or  
8 stored water) which can be produced from the Basin under cultural conditions of a particular year  
9 without causing an undesirable result.

10 (y) SBVMWD — San Bernardino Valley Municipal Water District.

11 (z) State Water — Supplemental Water imported through the State Water Resources  
12 Development System, pursuant to Chapter 8, Division 6, Part 6 of the Water Code.

13 (aa) Stored Water — Supplemental water held in storage, as a result of direct  
14 spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to  
15 agreement with Watermaster.

16 (bb) Supplemental Water — Includes both water imported to Chino Basin from outside  
17 Chino Basin Watershed, and reclaimed water.

18 (cc) WMWD — Defendant Western Municipal Water District of Riverside County.

19 5. List of Exhibits. The following exhibits are attached to this Judgment and made a part  
20 hereof:

21  
22 "A" -- "Location Map of Chino Basin" showing boundaries of Chino Basin Municipal Water  
23 District, and other geographic and political features of Chino Basin.

24 "B" -- "Hydrologic Map of Chino Basin" showing hydrologic features of Chino Basin.

25 "C" – Table Showing Parties in Overlying (Agricultural) Pool.

26 "D" – Table Showing Parties in Overlying (Non-agricultural Pool and Their Rights.

27 "E" – Table Showing Appropriators and Their Rights.  
28



1 "F" -- Overlying (Agricultural) Pool Pooling Plan.

2 "G" -- Overlying (Non-agricultural) Pool Pooling Plan.

3 "H" -- Appropriative Pool Pooling Plan.

4 "I" -- Engineering Appendix.

5 "J" -- Map of In Lieu Area No. 1.

6 "K" -- Legal Description of Chino Basin.

7  
8 II. DECLARATION OF RIGHTS

9  
10 A. HYDROLOGY

11  
12 6. Safe Yield. The Safe Yield of Chino Basin is 140,000 acre feet per year.

13 7. Overdraft and Prescriptive Circumstances. In each year for a period in excess of five  
14 years prior to filing of the First Amended Complaint herein, the Safe Yield of the Basin has been  
15 exceeded by the annual production therefrom, and Chino Basin is and has been for more than five years  
16 in a continuous state of over draft. The production constituting said overdraft has been open, notorious,  
17 continuous, adverse, hostile and under claim of right. The circumstances of said overdraft have given  
18 notice to all parties of the adverse nature of such aggregate over-production.

19 B. WATER RIGHTS IN SAFE YIELD

20  
21 8. Overlying Rights. The parties listed in Exhibits "C" and "D", are the owners or in  
22 possession of lands which overlie Chino Basin. As such, said parties have exercised overlying water  
23 rights in Chino Basin. All overlying rights owned or exercised by parties listed in Exhibits "C" and "D",  
24 have, in the aggregate, been limited by prescription except to the extent such rights have been preserved  
25 by self-help by said parties. Aggregate preserved overlying rights in the Safe Yield for agricultural pool  
26 use, including the rights of the State of California, total 82,800 acre feet per year. Overlying rights for  
27 non-agricultural pool use total 7,366 acre feet per year and are individually decreed for each affected  
28

1 party in Exhibit "D". No portion of the Safe Yield of Chino Basin exists to satisfy unexercised overlying  
2 rights, and such rights have all been lost by prescription. However, uses may be made of Basin Water on  
3 overlying lands which have no preserved overlying rights pursuant to the Physical Solution herein. All  
4 overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart  
5 therefrom ***for the term of the Peace Agreement except that the members of the Overlying (Non-***  
6 ***Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights (i)***  
7 ***within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the***  
8 ***procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000;***  
9 ***or (iii) in accordance with the Overlying (Non-Agricultural) Pool Pooling Plan set forth in Exhibit***  
10 ***"G."***<sup>4</sup>

11 9. Appropriative Rights. The parties listed in Exhibit "E" are the owners of appropriative  
12 rights, including rights by prescription, in the unadjusted amounts therein set forth, and by reason thereof  
13 are entitled under the Physical Solution to share in the remaining Safe Yield, after satisfaction of overlying  
14 rights and rights of the State of California, and in the Operating Safe Yield in Chino Basin, in the annual  
15 shares set forth in Exhibit "E".

16 (a) Loss of Priorities. By reason of the long continued overdraft in Chino Basin, and  
17 in light of the complexity of determining appropriative priorities and the need for conserving and  
18 making maximum beneficial use of the water resources of the State, each and all of the parties  
19 listed in Exhibit "E" are estopped and barred from asserting special priorities or preferences, inter  
20 se. All of said appropriative rights are accordingly deemed and considered of equal priority.

21 (b) Nature and Quantity. All rights listed in Exhibit "E" are appropriative and  
22 prescriptive in nature. By reason of the status of the parties, and the provisions of Section 1007  
23 of the Civil Code, said rights are immune from reduction or limitation by prescription.  
24

25  
26  
27 <sup>4</sup> Order dated September 28, 2000 and Order dated April 19, 2001 further modified by Order dated December 21, 2007.  
28

1           10.     Rights of the State of California. The State of California, by and through its Department  
2 of Corrections, Youth Authority and Department of Fish and Game, is a significant producer of ground  
3 water from and the State is the largest owner of land overlying Chino Basin. The precise nature and  
4 scope of the claims and rights of the State need not be, and are not, defined herein. The State, through  
5 said departments, has accepted the Physical Solution herein decreed, in the interests of implementing the  
6 mandate of Section 2 of Article X of the California Constitution. For all purposes of this Judgment, all  
7 future production by the State or its departments or agencies for overlying use on State-owned lands shall  
8 be considered as agricultural pool use.

9  
10                           C. RIGHTS TO AVAILABLE GROUND WATER STORAGE CAPACITY

11           11.     Available Ground Water Storage Capacity. There exists in Chino Basin a substantial  
12 amount of available ground water storage capacity which is not utilized for storage or regulation of Basin  
13 Waters. Said reservoir capacity can appropriately be utilized for storage and conjunctive use of  
14 supplemental water with Basin Waters. It is essential that said reservoir capacity utilization for storage  
15 and conjunctive use of supplemental water be undertaken only under Watermaster control and regulation,  
16 in order to protect the integrity of both such Stored Water and Basin Water in storage and the Safe Yield  
17 of Chino Basin.

18  
19           12.     Utilization of Available Ground Water Capacity. Any person or public entity, whether a  
20 party to this action or not, may make reasonable beneficial use of the available ground water storage  
21 capacity of Chino Basin for storage of supplemental water; provided that no such use shall be made  
22 except pursuant to written agreement with Watermaster, as authorized by Paragraph 28. In the allocation  
23 of such storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of  
24 rights in the Safe Yield or Operating Safe Yield of the Basin shall have priority and preference over  
25 storage for export.

1 III. INJUNCTION

2 13. Injunction Against Unauthorized Production of Basin Water. Each party in each of the  
3 respective pools is enjoined, as follows:  
4

5 (a) Overlying Agricultural Pool. Each party in the Overlying (Agricultural) Pool, its  
6 officers, agents, employees, successors and assigns, is and they each are ENJOINED AND  
7 RESTRAINED from producing ground water from Chino Basin in any year hereafter in excess of  
8 such party's correlative share of the aggregate of 82,800 acre feet allocated to said Pool, except  
9 pursuant to the Physical Solution or a storage water agreement.

10 (b) Overlying Non-Agricultural Pool. Each party in the Overlying Non-Agricultural  
11 Pool, its officers, agents, employees, successors and assigns, is and they each are ENJOINED  
12 AND RESTRAINED from producing ground water of Chino Basin in any year hereafter in excess  
13 of such party's decreed rights in the Safe Yield, except pursuant to the provisions of the Physical  
14 Solution or a storage water agreement.

15 (c) Appropriative Pool. Each party in the Appropriative Pool, its officers, agents,  
16 employees, successors and assigns, is and they are each ENJOINED AND RESTRAINED from  
17 producing ground water of Chino Basin in any year hereafter in excess of such party's decreed  
18 share of Operating Safe Yield, except pursuant to the provisions of the Physical Solution or a  
19 storage water agreement.

20  
21 14. Injunction Against Unauthorized Storage or Withdrawal of Stored Water. Each party, its  
22 officers, agents, employees, successors and assigns is and they each are ENJOINED AND  
23 RESTRAINED from storing supplemental water in Chino Basin for withdrawal, or causing withdrawal of,  
24 water stored by that party, except pursuant to the terms of a written agreement with Watermaster and in  
25 accordance with Watermaster regulations. Any supplemental water stored or recharged in the Basin,  
26 except pursuant to such a Watermaster agreement, shall be deemed abandoned and not classified as  
27 Stored Water. This paragraph has no application, as such, to supplemental water spread or provided in  
28 lieu by Watermaster pursuant to the Physical Solution.

1 IV. CONTINUING JURISDICTION

2 15. Continuing Jurisdiction. Full jurisdiction, power and authority are retained and reserved  
3 to the Court as to all matters contained in this judgment, except:  
4

5 (a) The redetermination of Safe Yield, as set forth in Paragraph 6, during the first ten  
6 (10) years of operation of the Physical Solution;

7 (b) The allocation of Safe Yield as between the several pools as set forth in  
8 Paragraph 44 of the Physical Solution;

9 (c) The determination of specific quantitative rights and shares in the declared Safe  
10 Yield or Operating Safe Yield herein declared in Exhibits "D" and "E"; and  
11

12 (d) The amendment or modification of Paragraphs 7 (a) and (b) of Exhibit "H", during  
13 the first ten (10) years of operation of the Physical Solution, and thereafter only upon affirmative  
14 recommendation of at least 67% of the voting power (determined pursuant to the formula  
15 described in Paragraph 3 of Exhibit "H"), but not less than one-third of the members of the  
16 Appropriative Pool Committee representatives of parties who produce water within IEUA or  
17 WMWD; after said tenth year the formula set forth in said Paragraph 7 (a) and 7 (b) of Exhibit "H"  
18 for payment of the costs of replenishment water may be changed to 100% gross or net, or any  
19 percentage split thereof, but only in response to recommendation to the Court by affirmative vote  
20 of at least 67% of said voting power of the Appropriative Pool representatives of parties who  
21 produce ground water within IEUA or WMWD, but not less than one-third of their number. In  
22 such event, the Court shall act in conformance with such recommendation unless there are  
23 compelling reasons to the contrary; and provided, further, that the fact that the allocation of Safe  
24 Yield or Operating Safe Yield shares may be rendered moot by a recommended change in the  
25 formula for replenishment assessments shall not be deemed to be such a "compelling reason."  
26  
27  
28

1 Said continuing jurisdiction is provided for the purpose of enabling the Court, upon application of any  
2 party, the Watermaster, the Advisory Committee or any Pool Committee, by motion and, upon at least 30  
3 days' notice thereof, and after hearing thereon, to make such further or supplemental orders or directions  
4 as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and  
5 to modify, amend or amplify any of the provisions of this Judgment.

6  
7 V. WATERMASTER

8 A. APPOINTMENT

9  
10 16. Watermaster Appointment. CBMWD, acting by and through a majority of its board of  
11 directors, is hereby appointed Watermaster, to administer and enforce the provisions of this Judgment  
12 and any subsequent instructions or orders of the Court hereunder. The term of appointment of  
13 Watermaster shall be for five (5) years. The Court will by subsequent orders provide for successive terms  
14 or for a successor Watermaster. Watermaster may be changed at any time by subsequent order of the  
15 Court, on its own motion, or on the motion of any party after notice and hearing. Unless there are  
16 compelling reasons to the contrary, the Court shall act in conformance with a motion requesting the  
17 Watermaster be changed if such motion is supported by a majority of the voting power of the Advisory  
18 Committee.

19 B. POWERS AND DUTIES

20  
21 17. Powers and Duties. Subject to the continuing supervision and control of the Court,  
22 Watermaster shall have and may exercise the express powers, and shall perform the duties, as provided  
23 in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing  
24 jurisdiction.

1           18.    Rules and Regulations.<sup>5</sup>

2                           **(a) Upon recommendation by the Advisory Committee, Watermaster shall make**  
3 **and adopt, after public hearing, appropriate rules and regulations for conduct of Watermaster**  
4 **affairs, including, meeting schedules and procedures, and compensation of members of**  
5 **Watermaster. Thereafter, Watermaster may amend the rules from time to time upon**  
6 **recommendation, or with approval of the Advisory Committee after hearing noticed to active**  
7 **parties, except that compensation of Watermaster members shall be subject to Court Approval. A**  
8 **copy of the rules and regulations, and of amendments, shall be mailed to each active party.**

9  
10                           **(b) Under the rules, Watermaster members shall be paid up to \$125 for each day's**  
11 **attendance at meetings at the direction of the board, not to exceed eight meetings in each month.**  
12 **Compensation shall not be paid for junkets or attendance at conferences, seminars, or retreats at**  
13 **locations other than Watermaster headquarters. Members shall not be compensated for more than**  
14 **one meeting each day.**

15                           **(c) Under the rules, Watermaster members may be reimbursed for reasonable and**  
16 **necessary travel, meals, lodging and registration expenses incurred on Watermaster business.**  
17 **Mileage shall not be paid for travel to or from Watermaster meetings unless the individual must**  
18 **travel more than 50 miles per month. The Watermaster's budget shall include an appropriation for**  
19 **expense reimbursement. The Watermaster shall file a report on the expense reimbursement with**  
20 **the court as part of the Annual Report. The Report shall disclose total expense reimbursements**  
21 **and single expenditures for items of \$125.00 or more.**

22  
23           19.    Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all  
24 necessary facilities and equipment; provided, that it is not the intent of the Court that Watermaster acquire  
25 any interest in real property or substantial capital assets.

26  
27 <sup>5</sup> Order dated March 31, 1999.



1           20.     Employment of Experts and Agents. Watermaster may employ or retain such  
2 administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as  
3 may be deemed appropriate in the carrying out of its powers and shall require appropriate bonds from all  
4 officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of  
5 allocation of costs of such services as well as of all other expenses of Watermaster administration as  
6 between the several pools established by the Physical Solution.

7  
8           21.     Measuring Devices. Watermaster shall cause parties, pursuant to uniform rules, to install  
9 and maintain in good operating condition, at the cost of each party, such necessary measuring devices or  
10 meters as Watermaster may deem appropriate. Such measuring devices shall be inspected and tested  
11 as deemed necessary by Watermaster, and the cost thereof shall constitute an expense of Watermaster.

12           22.     Assessments. Watermaster is empowered to levy and collect all assessments provided  
13 for in the pooling plans and Physical Solution.

14  
15           23.     Investment of Funds. Watermaster may hold and invest any and all Watermaster funds  
16 in investments authorized from time to time for public agencies of the State of California.

17           24.     Borrowing. Watermaster may borrow from time to time amounts not exceeding the  
18 annual anticipated receipts of Watermaster during such year.

19  
20           25.     Contracts. Watermaster may enter into contracts for the performance of any powers  
21 herein granted; provided, however, that Watermaster may not contract with or purchase materials,  
22 supplies or services from IEUA, except upon the prior recommendation and approval of the Advisory  
23 Committee and pursuant to written order of the Court.

24  
25           26.     Cooperation With Other Agencies. Subject to prior recommendation or approval of the  
26 Advisory Committee, Watermaster may act jointly or cooperate with agencies of the United States and the  
27 State of California or any political subdivisions, municipalities or districts or any person to the end that the  
28 purpose of the Physical Solution may be fully and economically carried out.

1           27.     Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool  
2 Committee and in accordance with Paragraph 54 (b), undertake relevant studies of hydrologic conditions,  
3 both quantitative and qualitative, and operating aspects of implementation of the management program  
4 for Chino Basin.

5           28.     Ground Water Storage Agreements. Watermaster shall adopt, with the approval of the  
6 Advisory Committee, uniformly applicable rules and a standard form of agreement for storage of  
7 supplemental water, pursuant to criteria therefore set forth in Exhibit "I". Upon appropriate application by  
8 any person, Watermaster shall enter into such a storage agreement; provided that all such storage  
9 agreements shall first be approved by written order of the Court, and shall by their terms preclude  
10 operations which will have a substantial adverse impact on other producers.

11           29.     Accounting for Stored Water. Watermaster shall calculate additions, extractions and  
12 losses and maintain an annual account of all Stored Water in Chino Basin, and any losses of water  
13 supplies or Safe Yield of Chino Basin resulting from such Stored Water.  
14

15           30.     Annual Administrative Budget. Watermaster shall submit to Advisory Committee an  
16 administrative budget and recommendation for each fiscal year on or before March 1. The Advisory  
17 Committee shall review and submit said budget and their recommendations to Watermaster on or before  
18 April 1, following. Watermaster shall hold a public hearing on said budget at its April quarterly meeting  
19 and adopt the annual administrative budget which shall include the administrative items for each pool  
20 committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to  
21 make a proper allocation of the expense among the several pools, together with Watermaster's proposed  
22 allocation. The budget shall contain such additional comparative information or explanation as the  
23 Advisory Committee may recommend from time to time. Expenditures within budgeted items may  
24 thereafter be made by Watermaster in the exercise of powers herein granted, as a matter of course. Any  
25 budget transfer in excess of 20% of a budget category during any budget year or modification of such  
26 administrative budget during any year shall be first submitted to the Advisory Committee for review and  
27 recommendation.  
28

1           31.     Review Procedures. All actions, decisions or rules of Watermaster shall be subject to  
2 review by the Court on its own motion or on timely motion by any party, the Watermaster (in the case of a  
3 mandated action), the Advisory Committee, or any Pool Committee, as follows:

4                   (a)     Effective Date of Watermaster Action. Any action, decision or rule of  
5 Watermaster shall be deemed to have occurred or been enacted on the date on which written  
6 notice thereof is mailed. Mailing of copies of approved Watermaster minutes to the active parties  
7 shall constitute such notice to all parties.

8                   (b)     Noticed Motion. Any party, the Watermaster (as to any mandated action), the  
9 Advisory Committee, or any Pool Committee may, by a regularly noticed motion, apply to the  
10 Court for review of any Watermaster's action, decision or rule. Notice of such motion shall be  
11 served personally or mailed to Watermaster and to all active parties. Unless otherwise ordered  
12 by the Court, such motion shall not operate to stay the effect of such Watermaster action,  
13 decision or rule.

14                   (c)     Time for Motion. Notice of motion to review any Watermaster action, decision or  
15 rule shall be served and filed within ninety (90) days after such Watermaster action, decision or  
16 rule, except for budget actions, in which event said notice period shall be sixty (60) days.

17                   (d)     De Novo Nature of Proceedings. Upon the filing of any such motion, the Court  
18 shall require the moving party to notify the active parties, the Watermaster, the Advisory  
19 Committee, and each Pool Committee, of a date for taking evidence and argument, and on the  
20 date so designated shall review de novo the question at issue. Watermaster's findings or  
21 decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive  
22 or prima facie proof of any fact in issue.

23                   (e)     Decision. The decision of the Court in such proceeding shall be an appealable  
24 supplemental order in this case. When the same is final, it shall be binding upon the  
25 Watermaster and all parties.  
26  
27  
28

1  
2  
3 C. ADVISORY AND POOL COMMITTEES

4 32. Authorization. Watermaster is authorized and directed to cause committees of producer  
5 representatives to be organized to act as Pool Committees for each of the several pools created under  
6 the Physical solution. Said Pool Committees shall, in turn, jointly form an Advisory Committee to assist  
7 Watermaster in performance of its functions under this judgment. Pool Committees shall be composed as  
8 specified in the respective pooling plans, and the Advisory Committee shall be composed of ten (10)  
9 voting representatives from each pool, as designated by the respective Pool Committee<sup>6</sup> **in accordance**  
10 **with each pool's pooling plan.** WMWD, **Three Valleys Municipal Water District (Successor to**  
11 **PVMWD)** and SBVMWD shall each be entitled to one non-voting representative on said Advisory  
12 Committee.

13  
14 33. Term and Vacancies. Members of any Pool Committee, shall serve for the term, and  
15 vacancies shall be filled, as specified in the respective pooling plan. Members of the Advisory Committee  
16 shall serve at the will of their respective Pool Committee.

17 34. Voting Power. The voting power on each Pool Committee shall be allocated as provided  
18 in the respective pooling plan. The voting power on the Advisory Committee shall be one hundred (100)  
19 votes allocated among the three pools in proportion to the total assessments paid to Watermaster during  
20 the preceding year; provided, that the minimum voting power of each pool shall be

21  
22 (a) Overlying Agricultural Pool 20,

23 (b) Overlying Non-Agricultural Pool 5, and

24 (c) Appropriative Pool 20.  
25  
26

27 <sup>6</sup> Order dated September 18, 1996.  
28

1 In the event any pool is reduced to its said minimum vote, the remaining votes shall be allocated between  
2 the remaining pools on said basis of assessments paid to Watermaster by each such remaining pool  
3 during the preceding year. The method of exercise of each pool's voting power on the Advisory  
4 Committee shall be as determined by the respective pool committees.

5           35.     Quorum. A majority of the voting power of the Advisory Committee or any Pool  
6 Committee shall constitute a quorum for the transaction of affairs of such Advisory or Pool Committee;  
7 provided, that at least one representative of each Pool Committee shall be required to constitute a  
8 quorum of the Advisory Committee. No Pool Committee representative may purposely absent himself or  
9 herself, without good cause, from an Advisory Committee meeting to deprive it of a quorum. Action by  
10 affirmative vote of a majority of the entire voting power of any Pool Committee or the Advisory Committee  
11 shall constitute action by such committee. Any action or recommendation of a Pool Committee or the  
12 Advisory Committee shall be transmitted to Watermaster in writing, together with a report of any  
13 dissenting vote or opinion.

14  
15           36.     Compensation. Pool or Advisory Committee members may receive compensation, to be  
16 established by the respective pooling plan, but not to exceed twenty-five dollars (\$25.00) for each  
17 meeting of such Pool or Advisory Committee attended, and provided that no member of a Pool or  
18 Advisory Committee shall receive compensation of more than three hundred (\$300.00) dollars for service  
19 on any such committee during any one year. All such compensation shall be a part of Watermaster  
20 administrative expense. No member of any Pool or Advisory Committee shall be employed by  
21 Watermaster or compensated by Watermaster for professional or other services rendered to such Pool or  
22 Advisory Committee or to Watermaster, other than the fee for attendance at meetings herein provided,  
23 plus reimbursement of reasonable expenses related to activities within the Basin.

24  
25           37.     Organization.

26                   (a)     Organizational Meeting. At its first meeting in each year, each Pool Committee  
27 and the Advisory Committee shall elect a chairperson and a vice chairperson from its  
28

1 membership. It shall also select a secretary, a treasurer and such assistant secretaries and  
2 treasurers as may be appropriate, any of whom may, but need not, be members of such Pool or  
3 Advisory Committee.

4 (b) Regular Meetings. All Pool Committees and the Advisory Committee shall hold  
5 regular meetings at a place and time to be specified in the rules to be adopted by each Pool and  
6 Advisory Committee. Notice of regular meetings of any Pool or Advisory Committee, and of any  
7 change in time or place thereof, shall be mailed to all active parties in said pool or pools.  
8

9 (c) Special Meetings. Special meetings of any Pool or Advisory Committee may be  
10 called at any time by the Chairperson or by any three (3) members of such Pool or Advisory  
11 Committee by delivering notice personally or by mail to each member of such Pool or Advisory  
12 Committee and to each active party at least 24 hours before the time of each such meeting in the  
13 case of personal delivery, and 96 hours in the case of mail. The calling notice shall specify the  
14 time and place of the special meeting and the business to be transacted. No other business shall  
15 be considered at such meeting.  
16

17 (d) Minutes. Minutes of all Pool Committee, Advisory Committee and Watermaster  
18 meetings shall be kept at Watermaster's offices. Copies thereof shall be mailed or otherwise  
19 furnished to all active parties in the pool or pools concerned. Said copies of minutes shall  
20 constitute notice of any Pool or Advisory Committee action therein reported, and shall be  
21 available for inspection by any party.

22 (e) Adjournments. Any meeting of any Pool or Advisory Committee may be  
23 adjourned to a time and place specified in the order of adjournment. Less than a quorum may so  
24 adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously  
25 posted forthwith on or near the door of the place where the meeting was held.

26 38. Powers and Functions. The powers and functions of the respective Pool Committees  
27 and the Advisory Committee shall be as follows:  
28

1 (a) Pool Committees. Each Pool Committee shall have the power and responsibility  
2 for developing policy recommendations for administration of its particular pool, as created under  
3 the Physical Solution. All actions and recommendations of any Pool Committee which require  
4 Watermaster implementation shall first be noticed to the other two pools. If no objection is  
5 received in writing within thirty (30) days, such action or recommendation shall be transmitted  
6 directly to Watermaster for action. If any such objection is received, such action or  
7 recommendation shall be reported to the Advisory Committee before being transmitted to  
8 Watermaster.

9 (b) Advisory Committee. The Advisory Committee shall have the duty to study, and  
10 the power to recommend, review and act upon all discretionary determinations made or to be  
11 made hereunder by Watermaster.

12  
13 [1] Committee Initiative. When any recommendation or advice of the  
14 Advisory Committee is received by Watermaster, action consistent therewith may be  
15 taken by Watermaster; provided, that any recommendation approved by 80 votes or more  
16 in the Advisory Committee shall constitute a mandate for action by Watermaster  
17 consistent therewith. If Watermaster is unwilling or unable to act pursuant to  
18 recommendation or advice from the Advisory Committee (other than such mandatory  
19 recommendations), Watermaster shall hold a public hearing, which shall be followed by  
20 written findings and decision. Thereafter, Watermaster may act in accordance with said  
21 decision, whether consistent with or contrary to said Advisory Committee  
22 recommendation. Such action shall be subject to review by the Court, as in the case of  
23 all other Watermaster determinations.

24  
25 [2] Committee Review. In the event Watermaster proposes to take  
26 discretionary action, other than approval or disapproval of a Pool Committee action or  
27 recommendation properly transmitted, or execute any agreement not theretofore within  
28 the scope of an Advisory Committee recommendation, notice of such intended action



1 shall be served on the Advisory Committee and its members at least thirty (30) days  
2 before the Watermaster meeting at which such action is finally authorized.

3 (c) Review of Watermaster Actions. Watermaster (as to mandated action), the  
4 Advisory Committee or any Pool Committee shall be entitled to employ counsel and expert  
5 assistance in the event Watermaster or such Pool or Advisory Committee seeks Court review of  
6 any Watermaster action or failure to act. The cost of such counsel and expert assistance shall be  
7 Watermaster expense to be allocated to the affected pool or pools.  
8

9 VI. PHYSICAL SOLUTION

10 A. GENERAL

11  
12 39. Purpose and Objective. Pursuant to the mandate of Section 2 of Article X of the  
13 California Constitution, the Court hereby adopts and orders the parties to comply with a Physical Solution.  
14 The purpose of these provisions is to establish a legal and practical means for making the maximum  
15 reasonable beneficial use of the waters of Chino Basin by providing the optimum economic, long-term,  
16 conjunctive utilization of surface waters, ground waters and supplemental water, to meet the  
17 requirements of water users having rights in or dependent upon Chino Basin.  
18

19 40. Need for Flexibility. It is essential that this Physical solution provide maximum flexibility  
20 and adaptability in order that Watermaster and the Court may be free to use existing and future  
21 technological, social, institutional and economic options, in order to maximize beneficial use of the waters  
22 of Chino Basin. To that end, the Court's retained jurisdiction will be utilized, where appropriate, to  
23 supplement the discretion herein granted to the Watermaster.

24 41. Watermaster Control. Watermaster, with the advice of the Advisory and Pool  
25 Committees, is granted discretionary powers in order to develop an optimum basin management program  
26 for Chino Basin, including both water quantity and quality considerations. Withdrawals and supplemental  
27 water replenishment of Basin Water, and the full utilization of the water resources of Chino Basin, must  
28



1 Any party who changes the character of his use may, by subsequent order of the Court, be  
2 reassigned to the proper pool; but the allocation of Safe Yield under Paragraph 44 hereof shall not be  
3 changed. Any non-party producer or any person who may hereafter commence production of water from  
4 Chino Basin, and who may become a party to this physical solution by intervention, shall be assigned to  
5 the proper pool by the order of the Court authorizing such intervention.

6 44. Determination and Allocation of Rights to Safe Yield of Chino Basin. The declared Safe  
7 Yield of Chino Basin is hereby allocated as follows:

<u>Pool</u>	<u>Allocation</u>
Overlying (Agricultural) Pool	414,000 acre-feet in any five (5) consecutive years.
Overlying (Non-agricultural) Pool	7,366 acre-feet per year.
Appropriative Pool	49,834 acre-feet per year.

13  
14 The foregoing acre foot allocations to the overlying pools are fixed. Any subsequent change in  
15 the Safe Yield shall be debited or credited to the Appropriative Pool. Basin Water available to the  
16 Appropriative Pool without replenishment obligation may vary from year to year as the Operating Safe  
17 Yield is determined by Watermaster pursuant to the criteria set forth in Exhibit "I".

18 45. Annual Replenishment. Watermaster shall levy and collect assessments in each year,  
19 pursuant to the respective pooling plans, in amounts sufficient to purchase replenishment water to  
20 replace production by any pool during the preceding year which exceeds that pool's allocated share of  
21 Safe Yield in the case of the overlying pools, or Operating Safe Yield in the case of the Appropriative  
22 Pool. It is anticipated that supplemental water for replenishment of Chino Basin may be available at  
23 different rates to the various pools to meet their replenishment obligations. If such is the case, each pool  
24 will be assessed only that amount necessary for the cost of replenishment water to that pool, at the rate  
25 available to the pool, to meet its replenishment obligation.



1 systems within the basin. Under those agreements, which are recognized hereby but shall be  
2 unaffected and unimpaired by this judgment, substantial quantities of reclaimed water may be  
3 made available for replenishment purposes. There are additional sources of reclaimed water  
4 which are, or may become, available to Watermaster for said purposes. Maximum beneficial use  
5 of reclaimed water shall be given high priority by Watermaster.

6 (b) State Water. State water constitutes a major available supply of supplemental  
7 water. In the case of State Water, Watermaster purchases shall comply with the water service  
8 provisions of the State's water service contracts. More specifically, Watermaster shall purchase  
9 State Water from MWD for replenishment of excess production within IEUA, WMWD and  
10 TVMWD, and from SBVMWD to replenish excess production within SBVMWD's boundaries in  
11 Chino Basin, except to the extent that MWD and SBVMWD give their consent as required by  
12 such State water service contracts.

13  
14 (c) Local Import. There exist facilities and methods for importation of surface and  
15 ground water supplies from adjacent basins and watersheds.

16  
17 (d) Colorado River Supplies. MWD has water supplies available from its Colorado  
18 River Aqueduct.

19 50. Methods of Replenishment. Watermaster may accomplish replenishment of  
20 overproduction from the Basin by any reasonable method, including:

21  
22 (a) Spreading and percolation or Injection of water in existing or new facilities,  
23 subject to the provisions of Paragraphs 19, 25 and 26 hereof.

24  
25 (b) In Lieu Procedures. Watermaster may make, or cause to be made, deliveries of  
26 water for direct surface use, in lieu of ground water production.

27 E. REVENUES

1           51.     Production Assessment. Production assessments, on whatever basis, may be levied by  
2 Watermaster pursuant to the pooling plan adopted for the applicable pool.

3           52.     Minimal Producers. Minimal Producers shall be exempted from payment of production  
4 assessments, upon filing of production reports as provided in Paragraph 47 of this Judgment, and  
5 payment of an annual five dollar (\$5.00) administrative fee as specified by Watermaster rules.  
6

7           53.     Assessment Proceeds -- Purposes. Watermaster shall have the power to levy  
8 assessments against the parties (other than minimal pumpers) based upon production during the  
9 preceding period of assessable production, whether quarterly, semi-annually or annually, as may be  
10 determined most practical by Watermaster or the affected Pool Committee.

11           54.     Administrative Expenses. The expenses of administration of this Physical Solution shall  
12 be categorized as either (a) general Watermaster administrative expense, or (b) special project expense.  
13

14                 (a)     General Watermaster Administrative Expense shall include office rental, general  
15 personnel expense, supplies and office equipment, and related incidental expense and general  
16 overhead.  
17

18                 (b)     Special Project Expense shall consist of special engineering, economic or other  
19 studies, litigation expense, meter testing or other major operating expenses. Each such project  
20 shall be assigned a Task Order number and shall be separately budgeted and accounted for.  
21 General Watermaster administrative expense shall be allocated and assessed against the  
22 respective pools based upon allocations made by the Watermaster, who shall make such  
23 allocations based upon generally accepted cost accounting methods. Special Project Expense  
24 shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express  
25 assent and finding of benefit by the Pool Committee, or pursuant to written order of the Court.

26           55.     Assessments -- Procedure. Assessments herein provided for shall be levied and  
27 collected as follows:  
28

1 (a) Notice of Assessment. Watermaster shall give written notice of all applicable  
2 assessments to each party on or before ninety (90) days after the end of the production period to  
3 which such assessment is applicable.

4 (b) Payment. Each assessment shall be payable on or before thirty (30) days after  
5 notice, and shall be the obligation of the party or successor owning the water production facility at  
6 the time written notice of assessment is given, unless prior arrangement for payment by others  
7 has been made in writing and filed with Watermaster.

8 (c) Delinquency. Any delinquent assessment shall bear interest at 10% per annum  
9 (or such greater rate as shall equal the average current cost of borrowed funds to the  
10 Watermaster) from the due date thereof. Such delinquent assessment and interest may be  
11 collected in a show-cause proceeding herein instituted by the Watermaster, in which case the  
12 Court may allow Watermaster its reasonable costs of collection, including attorney's fees.  
13

14  
15 56. Accumulation of Replenishment Water Assessment Proceeds. In order to minimize  
16 fluctuation in assessment and to give Watermaster flexibility in purchase and spreading of replenishment  
17 water, Watermaster may make reasonable accumulations of replenishment water assessment proceeds.  
18 Interest earned on such retained funds shall be added to the account of the pool from which the funds  
19 were collected and shall be applied only to the purchase of replenishment water.

20 57. Effective Date. The effective date for accounting and operation under this Physical  
21 Solution shall be July 1, 1977, and the first production assessments hereunder shall be due after July 1,  
22 1978. Watermaster shall, however, require installation of meters or measuring devices and establish  
23 operating procedures immediately, and the cost of such Watermaster activity (not including the cost of  
24 such meters and measuring devices) may be recovered in the first administrative assessment in 1978.  
25  
26  
27  
28

VII. MISCELLANEOUS PROVISIONS

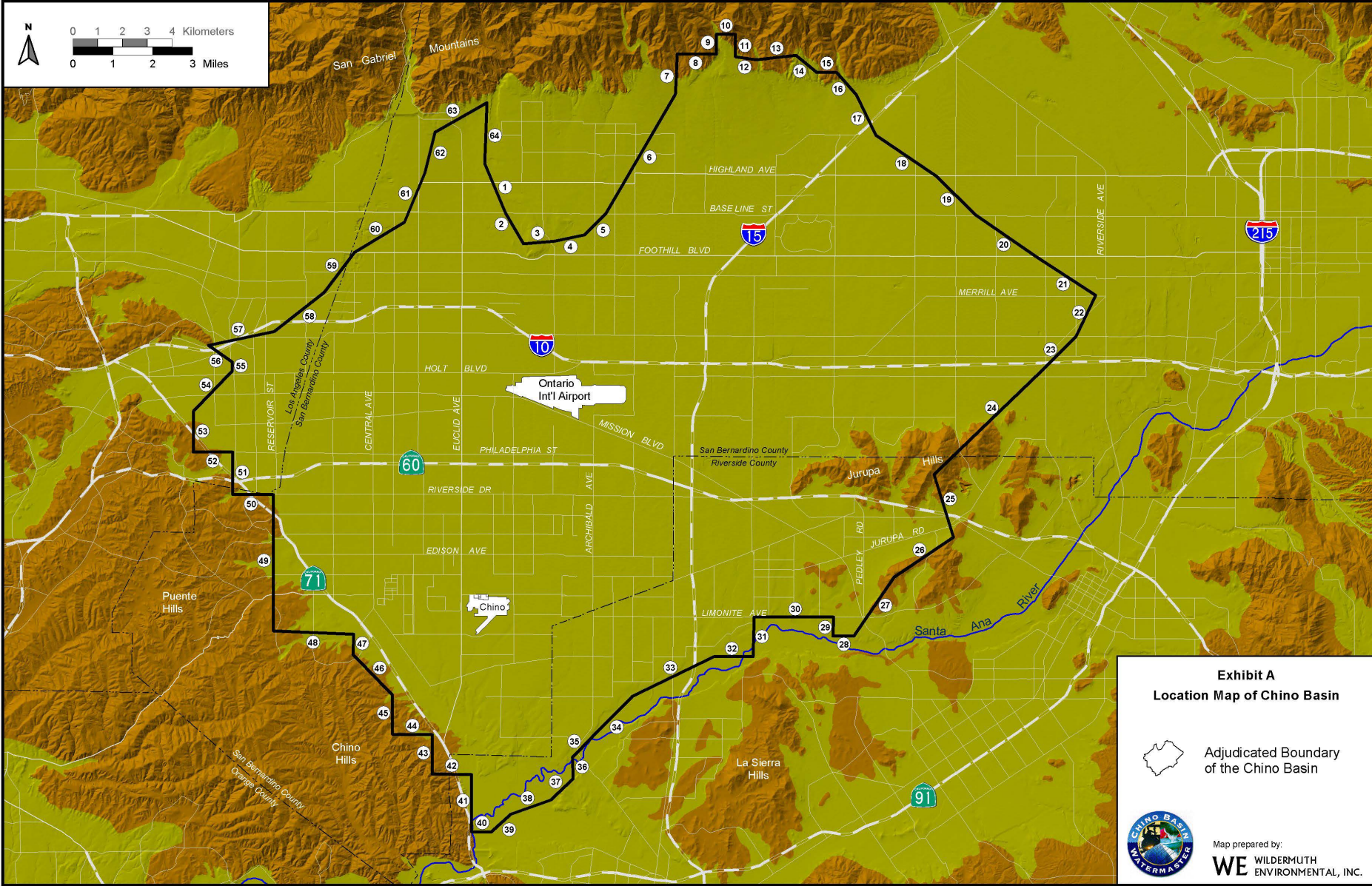
1  
2  
3 58. Designation of Address for Notice and Service. Each party shall designate the name and  
4 address to be used for purposes of all subsequent notices and service herein, either by its endorsement  
5 on the Stipulation for Judgment or by a separate designation to be filed within thirty (30) days after  
6 Judgment has been served. Said designation may be changed from time to time by filing a written notice  
7 of such change with the Watermaster. Any party desiring to be relieved of receiving notices of  
8 Watermaster or committee activity may file a waiver of notice on a form to be provided by Watermaster.  
9 Thereafter such party shall be removed from the Active Party list. Watermaster shall maintain at all times  
10 a current list of all active parties and their addresses for purposes of service. Watermaster shall also  
11 maintain a full current list of names and addresses of all parties or their successors, as filed herein.  
12 Copies of such lists shall be available, without cost, to any party, the Advisory Committee or any Pool  
13 Committee upon written request therefor.

14 59. Service of Documents. Delivery to or service upon any party or active party by the  
15 Watermaster, by any other party, or by the Court, of any item required to be served upon or delivered to  
16 such party or active party under or pursuant to the Judgment shall be made personally or by deposit in  
17 the United States mail, first class, postage prepaid, addressed to the designee and at the address in the  
18 latest designation filed by such party or active party.

19  
20 60. Intervention After Judgment. Any non-party assignee of the adjudicated appropriate  
21 rights of any appropriator, or any other person newly proposing to produce water from Chino Basin, may  
22 become a party to this Judgment upon filing a petition in intervention. Said intervention must be  
23 confirmed by order of this Court. Such intervenor shall thereafter be a party bound by this judgment and  
24 entitled to the rights and privileges accorded under the Physical Solution herein, through the pool to which  
25 the Court shall assign such intervenor.  
26  
27  
28







**Exhibit A**  
**Location Map of Chino Basin**

 Adjudicated Boundary  
of the Chino Basin



Map prepared by:  
**WE** WILDERMUTH  
ENVIRONMENTAL, INC.





**Exhibit B**  
**Hydrologic Map of Chino Basin**

**Fault**  
 (Solid where known; dashed where approximate; dotted where concealed; queried where unknown; big dots where barrier to groundwater flow)

**Groundwater Divide**



Map prepared by:  
**WE WILDERMUTH ENVIRONMENTAL, INC.**

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	STATE OF CALIFORNIA	Aphessetche, Xavier
2	COUNTY OF SAN BERNARDINO	Arena Mutual Water Assn.
3	Abacherli, Dairy, Inc.	Armstrong Nurseries, Inc.
4	Abacherli, Frank	Arretche, Frank
5	Abacherli, Shirley	Arretche, Jean Pierre
6	Abbona, Anna	Arvidson, Clarence F.
7	Abbona, James	Arvidson, Florence
8	Abbona, Jim	Ashley, George W.
9	Abbona, Mary	Ashley, Pearl E.
10	Agliani, Amelia H.	Atlas Farms
11	Agman, Inc.	Atlas Ornamental Iron Works, Inc.
12	Aguerre, Louis B.	Aukeman, Carol
13	Ahmanson Trust Co.	Aukeman, Lewis
14	Akiyama, Shizuye	Ayers, Kenneth C., aka
15	Akiyama, Tomoo	Kelley Ayers
16	Akkerman, Dave	Bachoc, Raymond
17	Albers, J.N.	Baldwin, Edgar A.
18	Albers, Nellie	Baldwin, Lester
19	Alewyn, Jake J.	Banbury, Carolyn
20	Alewyn, Normalee	Bangma Dairy
21	Alger, Mary D.	Bangma, Arthur
22	Alger, Raymond	Bangma, Ida
23	Allen, Ben F.	Bangma, Martin
24	Allen, Jane F.	Bangma, Sam
25	Alta-Dena Dairy	Barba, Anthony B.
26	Anderson Farms	Barba, Frank
27	Anguiano, Sarah L.S.	Barcellos, Joseph
28	Anker, Gus	Barnhill, Maurine W.
	Barnhill, Paul	Boersma, Angie

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Bartel, Dale	Boersma, Berdina
2	Bartel, Ursula	Boersma, Frank
3	Bartel, Willard	Boersma, Harry
4	Barthelemy, Henry	Boersma, Paul
5	Barthelemy, Roland	Boersma, Sam
6	Bassler, Donald V., M.D.	Boersma, William L.
7	Bates, Lowell R.	Bohlander & Holmes, Inc.
8	Bates, Mildred L.	Bokma, Peter
9	Beahm, James W.	Bollema, Jacob
10	Beahm, Joan M.	Boonstoo, Edward
11	Bekendam, Hank	Bootsma, Jim
12	Bekendam, Pete	Borba, Dolene
13	Bello, Eugene	Borba, Dolores
14	Bello, Olga	Borba, Emily
15	Beltman, Evelyn	Borba, George
16	Beltman, Tony	Borba, John
17	Bergquist Properties, Inc.	Borba, John & Sons
18	Bevacqua, Joel A.	Borba, John Jr.
19	Bevacqua, Marie B.	Borba, Joseph A.
20	Bidart, Bernard	Borba, Karen E.
21	Bidart, Michael J.	Borba, Karen M.
22	Binnell, Wesley	Borba, Pete, Estate of
23	Black, Patricia E.	Borba, Ricci
24	Black, Victor	Borba, Steve
25	Bodger, John & Sons Co.	Borba, Tom
26	Boer, Adrian	Bordisso, Alleck
27	Boersma and Wind Dairy	Borges, Angelica M.
28	Borges, Bernadette	Bothof, Roger W.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Borges, John O.	Bouma, Cornie
2	Borges, Linda L.	Bouma, Emma
3	Borges, Manual Jr.	Bouma, Henry P.
4	Borges, Tony	Bouma, Martin
5	Bos, Aleid	Bouma, Peter G. & Sons Dairy
6	Bos, Gerrit	Bouma, Ted
7	Bos, John	Bouman, Helen
8	Bos, John	Bouman, Sam
9	Bos, Margaret	Bower, Mabel E.
10	Bos, Mary	Boys Republic
11	Bos, Mary Beth	Breedyk, Arie
12	Bos, Tony	Breedyk, Jessie
13	Bosch, Henrietta	Briano Brothers
14	Bosch, Peter T.	Briano, Albert
15	Boschma, Betty	Briano, Albert Trustee for
16	Boschma, Frank	Briano, Albert Frank
17	Boschma, Greta	Briano, Lena
18	Boschma, Henry	Brink, Russell N.
19	Bosma, Dick	Brinkerhoff, Margaret
20	Bosma, Florence G.	Brinkerhoff, Robert L.
21	Bosma, Gerrit	Britschgi, Florence
22	Bosma, Jacob J.	Britschgi, Magdalena Garetto
23	Bosma, Jeanette Thea	Britschgi, Walter P.
24	Bosman, Frank	Brommer, Marvin
25	Bosman, Nellie	Brookside Enterprizes, dba
26	Bosnyak, Goldie M.	Brookside Vineyard Co.
27	Bosnyak, Martin	Brothers Three Dairy
28	Brown, Eugene	Chino Corona Investment

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Brun, Martha M.	Chino Water Co.
2	Brun, Peter Robert	Christensen, Leslie
3	Buma, Duke	Christensen, Richard G.
4	Buma, Martha	Christian, Ada R.
5	Bunse, Nancy	Christian, Harold F.
6	Bunse, Ronnie L.	Christy, Ella J.
7	Caballero, Bonnie L.	Christy, Ronald S.
8	Caballero, Richard F.	Cihigoyenette, Jean
9	Cable Airport Inc.	Cihigoyenette, Leona
10	Cadlini, Donald	Cihigoyenette, Martin
11	Cadlini, Jesse R.	Clarke, Arthur B.
12	Cadlini, Marie Edna	Clarke, Nancy L.
13	Cambio, Anna	Clarke, Phyllis J.
14	Cambio, Charles, Estate of	Coelho, Isabel
15	Cambio, William V.	Coelho, Joe A. Jr.
16	Cardoza, Florence	Collins, Howard E.
17	Cardoza, Olivi	Collins, Judith F.
18	Cardoza, Tony	Collinsworth, Ester L.
19	Carnesi, Tom	Collinsworth, John E.
20	Carver, Robt M., Trustee	Collinsworth, Shelby
21	Cauffman, John R.	Cone Estate (05-2-00648/649)
22	Chacon Bros.	Consolidated Freightways Corp.
23	Chancon, Elvera P.	of Delaware
24	Chacon, Joe M.	Corona Farms Co.
25	Chacon, Robert M.	Corra, Rose
26	Chacon, Virginia L.	Costa, Dimas S.
27	Chez, Joseph C.	Costa, Laura
28	Costa, Myrtle	De Boer, L.H.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Costamagna, Antonio	De Boer, Sidney
2	Costamagna, Joseph	De Bos, Andrew
3	Cousyn, Claus B.	De Graaf, Anna Mae
4	Cramer, Carole F.	De Graaf, Gerrit
5	Cramer, William R.	De Groot, Dick
6	Crossroads Auto Dismantlers, Inc.	De Groot, Dorothy
7	Crouse, Beatrice I.	De Groot, Ernest
8	Crouse, Roger	De Groot, Henrietta
9	Crowley, Juanita C.	De Groot, Jake
10	Crowley, Ralph	De Groot, Pete Jr.
11	Cucamonga Vintners	De Haan, Bernadena
12	D'Astici, Teresa	De Haan, Henry
13	Da Costa, Cecilia B.	De Hoog, Adriana
14	Da Costa, Joaquim F.	De Hoog, Joe
15	Daloisio, Norman	De Hoog, Martin
16	De Berard Bros.	De Hoog, Martin L.
17	De Berard, Arthur, Trustee	De Hoog, Mitch
18	De Berard, Charles	De Hoog, Tryntje
19	De Berard, Chas., Trustee	De Jager, Cobi
20	De Berard, Helan J.	De Jager, Edward D.
21	De Berard, Robert	De Jong Brothers Dairy
22	De Berard, Robert Trustee	De Jong, Cornelis
23	De Bie, Adrian	De Jong, Cornelius
24	De Bie, Henry	De Jong, Grace
25	De Bie, Margaret M.	De Jong, Jake
26	De Bie, Marvin	De Jong, Lena
27	De Boer, Fred	De Leeuw, Alice
28	De Leeuw, Sam	Dirkse, Catherine



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	De Soete, Agnes	Dirkse, Charles C.
2	De Soete, Andre	Dixon, Charles E.
3	De Vries, Abraham	Dixon, Geraldine A.
4	De Vries, Case	Doesberg, Hendrica
5	De Vries, Dick	Doesburg, Theodorus, P.
6	De Vries, Evelyn	Dolan, Marion
7	De Vries, Henry, Estate of	Dolan, Michael H.
8	De Vries, Hermina	Dominguez, Helen
9	De Vries, Jack H.	Dominguez, Manual
10	De Vries, Jane	Donkers, Henry A.
11	De Vries, Janice	Donkers, Nellie G.
12	De Vries, John	Dotta Bros.
13	De Vries, John J.	Douma Brothers Dairy
14	De Vries, Neil	Douma, Betty A.
15	De Vries, Ruth	Douma, Fred A.
16	De Vries, Theresa	Douma, Hendrika
17	De Wit, Gladys	Douma, Herman G.
18	De Wit, Peter S.	Douma, Narleen J.
19	De Wyn, Evert	Douma, Phillip M.
20	De Zoete, Hattie V.	Dow Chemical Co.
21	Do Zoete, Leo A.	Dragt, Rheta
22	Decker, Hallie	Dragt, William
23	Decker, Henry A.	Driftwood Dairy Farm
24	Demmer, Ernest	Droogh, Case
25	Di Carlo, Marie	Duhalde, Marian
26	Di Carlo, Victor	Duhalde, Lauren
27	Di Tommaso, Frank	Duits, Henrietta
28	Duits, John	Excelsior Farms F.D.I.C.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Dunlap, Edna Kraemer,	Fagundes, Frank M.
2	Estate of	Fagundes, Mary
3	Durrington, Glen	Fernandes, Joseph Jr.
4	Durrington, William F.	Fernandes, Velma C.
5	Dusi, John Sr.	Ferraro, Ann
6	Dykstra, Dick	Ferreira, Frank J.
7	Dykstra, John	Ferreira, Joe C. Jr.
8	Dykstra, John & Sons	Ferreira, Narcie
9	Dykstra, Wilma	Fillippi, J. Vintage Co.
10	Dyt, Cor	Filippi, Joseph
11	Dyt, Johanna	Filippi, Joseph A.
12	E and S Grape Growers	Filippi, Mary E.
13	Eaton, Thomas, Estate of	Fitzgerald, John R.
14	Echeverria, Juan	Flameling Dairy Inc.
15	Echeverria, Carlos	Flamingo Dairy
16	Echeverria, Pablo	Foss, Douglas E.
17	Eilers, E. Myrle	Foss, Gerald R.
18	Eilers, Henry W.	Foss, Russel
19	El Prado Golf Course	Fred & John Troost No. 1 Inc.
20	Ellsworth, Rex C.	Fred & Maynard Troost No. 2 Inc.
21	Engelsma, Jake	Freitas, Beatriz
22	Engelsma, Susan	Freitas, Tony T.
23	Escojeda, Henry	Gakle, Louis L.
24	Etiwanda Grape Products Co.	Galleano Winery, Inc.
25	Euclid Ave. Investment One	Galleano, Bernard D.
26	Euclid Ave. Investment Four	Galleano, D.
27	Euclid Ave. Three Investment	Galleano, Mary M.
28	Garcia, Pete	Hansen, Raymond F.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Gardner, Leland V.	Hanson, Ardeth W.
2	Gardner, Lola M.	Harada, James T.
3	Garrett, Leonard E.	Harada, Violet A.
4	Garrett, Patricia T.	Haringa, Earl and Sons
5	Gastelluberry, Catherine	Haringa, Herman
6	Gastelluberry, Jean	Haringa, Rudy
7	Gilstrap, Glen E.	Haringa, William
8	Gilstrap, Marjorie J.	Harper, Cecilia de Mille
9	Godinho, John	Harrington, Winona
10	Godinho, June	Harrison, Jacqueline A.
11	Gonsalves, Evelyn	Hatanaka, Kenichi
12	Gonsalves, John	Heida, Annie
13	Gorzeman, Geraldine	Heida, Don
14	Gorzeman, Henry A.	Heida, Jim
15	Gorzeman, Joe	Heida, Sam
16	Govea, Julia	Helms, Addison D.
17	Goyenette, Albert	Helms, Irma A.
18	Grace, Caroline E.	Hermans, Alma I.
19	Grace, David J.	Hermans, Harry
20	Gravatt, Glenn W.	Hettinga, Arthur
21	Gravatt, Sally Mae	Hettinga, Ida
22	Greydanus Dairy, Inc.	Hettinga, Judy
23	Greydanus, Rena	Hettinga, Mary
24	Griffin Development Co.	Hettinga, Wilbur
25	Haagsma, Dave	Heublein, Inc., Grocery Products
26	Haagsma, John	Group
27	Hansen, Mary D.	Hibma, Catherine M.
28	Hibma, Sidney	Hohberg, Harold C.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Hicks, Kenneth I.	Hohberg, Harold W.
2	Hicks, Minnie M.	Holder, Arthur B.
3	Higgins Brick Co.	Holder, Dorothy F.
4	Highstreet, Alfred V.	Holmes, A. Lee
5	Highstreet, Evada V.	Holmes, Frances P.
6	Hilarides, Bertha as Trustee	Hoogeboom, Gertrude
7	Hilarides, Frank	Hoogeboom, Pete
8	Hilarides, John as Trustee	Hoogendam, John
9	Hindelang, Tillie	Hoogendam, Tena
10	Hindelang, William	Houssels, J. K. Thoroughbred
11	Hobbs, Bonnie C.	Farm
12	Hobbs, Charles W.	Hunt Industries
13	Hobbs, Hazel I.	Idsinga, Ann
14	Hobbs, Orlo M.	Idsinga, William W.
15	Hoekstra, Edward	Imbach Ranch, Inc.
16	Hoekstra, George	Imbach, Kenneth E.
17	Hoekstra, Grace	Imbach, Leonard K.
18	Hoekstra, Louie	Imbach, Oscar K.
19	Hofer, Paul B.	Imbach, Ruth M.
20	Hofer, Phillip F.	Indaburu, Jean
21	Hofstra, Marie	Indaburu, Marceline
22	Hogeboom, Jo Ann M.	Iseli, Kurt H.
23	Hogeboom, Maurice D.	Ito, Kow
24	Hogg, David V.	J & B Dairy Inc.
25	Hogg, Gene P.	Jaques, Johnny C. Jr.
26	Hogg, Warren G.	Jaques, Mary
27	Hohberg, Edith J.	Jaques, Mary Lou
28	Jay Em Bee Farms	Knevelbaard, John

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Johnson Bro's Egg Ranches, Inc.	Knudsen, Ejnar
2	Johnston, Ellwood W.	Knudsen, Karen M.
3	Johnston, George F. Co.	Knudsen, Kenneth
4	Johnston, Judith H.	Knudson, Robert
5	Jones, Leonard P.	Knudson, Darlene
6	Jongsma & Sons Dairy	Koel, Helen S.
7	Jongsma, Diana A.	Koetsier, Gerard
8	Jongsma, Dorothy	Koetsier, Gerrit J.
9	Jongsma, George	Koetsier, Jake
10	Jongsma, Harold	Koning, Fred W.
11	Jongsma, Henry	Koning, Gloria
12	Jongsma, John	Koning, J. W. Estate
13	Jongsma, Nadine	Koning, James A.
14	Jongsma, Tillie	Koning, Jane
15	Jordan, Marjorie G.	Koning, Jane C.
16	Jordan, Troy O.	Koning, Jennie
17	Jorritsma, Dorothy	Koning, John
18	Juliano, Albert	Koning, Victor A.
19	Kamper, Cornelis	Kooi Holstein Corporation
20	Kamstra, Wilbert	Koolhaas, Kenneth E.
21	Kaplan, Lawrence J.	Koolhaas, Simon
22	Kasbergen, Martha	Koolhaas, Sophie Grace
23	Kasbergen, Neil	Koopal, Grace
24	Kazian, Angelen Estate of	Koopal, Silas
25	Kingsway, Const. Corp.	Koopman, Eka
26	Klapps Market	Koopman, Gene T.
27	Kline, James K.	Koopman, Henry G.
28	Koopman, Ted	Leck, Arthur A.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Koopman, Tena	Leck, Evelyn M.
2	Koot, Nick	Lee, Harold E.
3	Koster, Aart	Lee, Helen J.
4	Koster, Frances	Lee, Henrietta C.
5	Koster, Henry B.	Lee, R. T. Construction Co.
6	Koster, Nellie	Lekkerkerk, Adriana
7	Kroes, Jake R.	Lekkerkerk, L. M.
8	Kroeze, Bros	Lekkerkerker, Nellie
9	Kroeze, Calvin E.	Lekkerkerker, Walt
10	Kroeze, John	Lewis Homes of California
11	Kroeze, Wesley	Livingston, Dorothy M.
12	Kruckenber, Naomi	Livingston, Rex E.
13	Kruckenber, Perry	Lokey, Rosemary Kraemer
14	L. D. S. Welfare Ranch	Lopes, Candida A.
15	Labrucherie, Mary Jane	Lopes, Antonio S.
16	Labrucherie, Raymond F.	Lopez, Joe D.
17	Lako, Samuel	Lourenco, Carlos, Jr.
18	Landman Corp.	Lourenco, Carmelina P.
19	Lanting, Broer	Lourenco, Jack C.
20	Lanting, Myer	Lourenco, Manual H.
21	Lass, Jack	Lourenco, Mary
22	Lass, Sandra L.	Lourenco, Mary
23	Lawrence, Cecelia, Estate of	Luiten, Jack
24	Lawrence, Joe H., Estate of	Luiz, John M.
25	Leal, Bradley W.	Luna, Christine I.
26	Leal, John C.	Luna, Ruben T.
27	Leal, John Craig	Lusk, John D. and Sons A California Corporation
28		
	Lyon, Gregory E.	Mickel, Louise

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Lyon, Paula E.	Miersma, Dorothy
2	M & W Co. #2	Meirsma, Harry C.
3	Madole, Betty M.	Minaberry, Arnaud
4	Madole, Larry B.	Minaberry, Marie
5	Marquez, Arthur	Mistretta, Frank J.
6	Marquine, Jean	Mocho and Plaa Inc.
7	Martin, Lelon O.	Mocho, Jean
8	Martin, Leon O.	Mocho, Noeline
9	Martin, Maria D.	Modica, Josephine
10	Martin, Tony J.	Montes, Elizabeth
11	Martins, Frank	Montes, Joe
12	Mathias, Antonio	Moons, Beatrice
13	Mc Cune, Robert M.	Moons, Jack
14	Mc Masters, Gertrude	Moramarco, John A. Enterprise
15	Mc Neill, J. A.	Moreno, Louis W.
16	Mc Neill, May F.	Moss, John R.
17	Mees, Leon	Motion Pictures Associates, Inc.
18	Mello and Silva Dairy	Moynier, Joe
19	Mello and Sousa Dairy	Murphy, Frances V.
20	Mello, Emilia	Murphy, Myrl L.
21	Mello, Enos C.	Murphy, Naomi
22	Mello, Mercedes	Nanne, Martin Estate of
23	Mendondo, Catherine	Nederend, Betty
24	Mendondo, Dominique	Nederend, Hans
25	Meth. Hosp. – Sacramento	Norfolk, James
26	Metzger, R. S.	Norfolk, Martha
27	Metzger, Winifred	Notrica, Louis
28	Nyberg, Lillian N.	Ormonde, Viva

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Nyenhuis, Annie	Ortega, Adeline B.
2	Nyenhuis, Jim	Ortega, Bernard Dino
3	Occidental Land Research	Osterkamp, Joseph S.
4	Okumura, Marion	Osterkamp, Margaret A.
5	Okumura, Yuiche	P I E Water Co.
6	Oldengarm, Effie	Palmer, Eva E.
7	Oldengarm, Egbert	Palmer, Walter E.
8	Oldengarm, Henry	Parente, Luis S.
9	Oliviera, Manuel L.	Parente, Mary Borba
10	Oliviera, Mary M.	Parks, Jack B.
11	Olson, Albert	Parks, Laura M.
12	Oltmans Construction Co.	Patterson, Lawrence E. Estate of
13	Omlin, Anton	Payne, Clyde H.
14	Omlin, Elsie L.	Payne, Margo
15	Ontario Christian School Assn.	Pearson, Athelia K.
16	Oord, John	Pearson, William C.
17	Oostdam, Jacoba	Pearson, William G.
18	Oostdam, Pete	Pene, Robert
19	Oosten, Agnes	Perian, Miller
20	Oosten, Anthonia	Perian, Ona E.
21	Oosten, Caroline	Petrissans, Deanna
22	Oosten, John	Petrissans, George
23	Oosten, Marinus	Petrissans, Jean P.
24	Oosten, Ralph	Petrissans, Marie T.
25	Orange County Water District	Pickering, Dora M.
26	Ormonde, Manuel	(Mrs. A. L. Pickering)
27	Ormonde, Pete, Jr.	Pierce, John
28	Pierce, Sadie	Righetti, A. T.



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Pietszak, Sally	Riley, George A.
2	Pine, Joe	Riley, Helen C.
3	Pine, Virginia	Robbins, Jack K.
4	Pires, Frank	Rocha, John M.
5	Pires, Marie	Rocha, Jose C.
6	Plaa, Jeanne	Rodrigues, John
7	Plaa, Michel	Rodrigues, Manuel
8	Plantenga, Agnes	Rodrigues, Manuel, Jr.
9	Plantenga, George	Rodrigues, Mary L.
10	Poe, Arlo D.	Rodriguez, Daniel
11	Pomona Cemetery Assn.	Rogers, Jack D.
12	Porte, Cecelia, Estate of	Rohrer, John A.
13	Porte, Garritt, Estate of	Rohrer, Theresa D.
14	Portsmouth, Vera McCarty	Rohrs, Elizabeth H.
15	Ramella, Mary M.	Rossetti, M. S.
16	Ramirez, Concha	Roukema, Angeline
17	Rearick, Hildegard H.	Roukema, Ed.
18	Rearick, Richard R.	Roukema, Nancy
19	Reinalda, Clarence	Roukema, Siebren
20	Reitsma, Greta	Ruderian, Max J.
21	Reitsma, Louis	Russell, Fred J.
22	Rice, Bernice	Rusticus, Ann
23	Rice, Charlie E.	Rusticus, Charles
24	Richards, Karin	Rynsburger, Arie
25	(Mrs. Ronnie Richards)	Rynsburger, Berdena, Trust
26	Richards, Ronald L.	Rynsburger, Joan Adele
27	Ridder, Jennie Wassenaar	Rynsburger, Thomas
28	S. P. Annex, Inc.	Scott, Frances M.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Salisbury, Elinor J.	Scott, Linda F.
2	Sanchez, Edmundo	Scott, Stanley A.
3	Sanchez, Margarita O.	Scritsmier, Lester J.
4	Santana, Joe Sr.	Serl, Charles A.
5	Santana, Palmira	Serl, Rosalie P.
6	Satragni, John B. Jr.	Shady Grove Dairy, Inc.
7	Scaramella, George P.	Shamel, Burt A.
8	Schaafsma Bros.	Shelby, Harold E.
9	Schaafsma, Jennie	Shelby, John A.
10	Schaafsma, Peter	Shelby, Velma M.
11	Schaafsma, Tom	Shelton, Alice A.
12	Schaap, Andy	Sherwood, Robert W.
13	Schaap, Ids	Sherwood, Sheila J.
14	Schaap, Maria	Shue, Eva
15	Schacht, Sharon C.	Shue, Gilbert
16	Schakel, Audrey	Sieperda, Anne
17	Schakel, Fred	Sieperda, James
18	Schmid, Olga	Sigrist, Hans
19	Schmidt, Madeleine	Sigrist, Rita
20	Schoneveld, Evert	Silveira, Arline L.
21	Schoneveld, Henrietta	Silveira, Frank
22	Schoneveld, John	Silveira, Jack
23	Schoneveld, John Allen	Silveira, Jack P. Jr.
24	Schug, Donald E.	Simas, Dolores
25	Schug, Shirley A.	Simas, Joe
26	Schuh, Bernatta M.	Singleton, Dean
27	Schuh, Harold H.	Singleton, Elsie R.
28	Sinnott, Jim	Staal, John

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Sinnott, Mildred B.	Stahl, Zippora P.
2	Slegers, Dorothy	Stampfl, Berta
3	Slegers, Hubert J.	Stampfl, William
4	Slegers, Jake	Stanley, Robert E.
5	Slegers, Jim	Stark, Everett
6	Slegers, Lenwood M.	Stellingwerf, Andrew
7	Slegers, Martha	Stellingwerf, Henry
8	Slegers, Tesse J.	Stellingwerf, Jenette
9	Smith, Edward S.	Stellingwerf, Shana
10	Smith, Helen D.	Stellingwerf, Stan
11	Smith, James E.	Stelzer, Mike C.
12	Smith, Keith J.	Sterk, Henry
13	Smith, Lester W.	Stiefel, Winifred
14	Smith, Lois Maxine	Stiefel, Jack D.
15	Smith, Marjorie W.	Stigall, Richard L.
16	Soares, Eva	Stigall, Vita
17	Sogioka, Mitsuyoshi	Stockman's Inn
18	Sogioka, Yoshimato	Stouder, Charlotte A.
19	Sousa, Sam	Stouder, William C.
20	Southern Pacific Land Co.	Struikmans, Barbara
21	Southfield, Eddie	Struikmans, Gertie
22	Souza, Frank M.	Struikmans, Henry Jr.
23	Souza, Mary T.	Struikmans, Henry Sr.
24	Spickerman, Alberta	Struikmans, Nellie
25	Spickerman, Florence	Swager, Edward
26	Spickerman, Rudolph	Swager, Gerben
27	Spyksma, John	Swager, Johanna
28	Swager, Marion	Terpstra, Theodore G.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Swierstra, Donald	Teune, Tony
2	Swierstra, Fanny	Teunissen, Bernard
3	Sybrandy, Ida	Teunissen, Jane
4	Sybrandy, Simon	Thomas, Ethel M.
5	Sytsma, Albert	Thommen, Alice
6	Sytsma, Edith	Thommen, Fritz
7	Sytsma, Jennie	Tillema, Allie
8	Sytsma, Louie	Tillema, Harold
9	Te Velde, Agnes	Tillema, Klaas D.
10	Te Velde, Bay	Timmons, William R.
11	Te Velde, Bernard A.	Tollerup, Barbara
12	Te Velde, Bonnie	Tollerup, Harold
13	Te Velde, Bonnie G.	Trapani, Louis A.
14	Te Velde, George	Trimlett, Arlene R.
15	Te Velde, George, Jr.	Trimlett, George E.
16	Te Velde, Harm	Tristant, Pierre
17	Te Velde, Harriet	Tuinhout, Ale
18	Te Velde, Henry J.	Tuinhout, Harry
19	Te Velde, Jay	Tuinhout, Hilda
20	Te Velde, Johanna	Tuls, Elizabeth
21	Te Velde, John H.	Tuls, Jack S.
22	Te Velde, Ralph A.	Tuls, Jake
23	Te Velde, Zwaantina, Trustee	Union Oil Company of California
24	Ter Maaten, Case	United Dairyman's Co-op.
25	Ter Maaten, Cleone	Urquhart, James G.
26	Ter Maaten, Steve	Usle, Cathryn
27	Terpstra, Carol	Usle, Faustino
28	V & Y Properties	Van Hofwegen, Clara

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Vaile, Beryl M.	Van Hofwegen, Jessie
2	Valley Hay Co.	Van Klaveren, A.
3	Van Beek Dairy Inc.	Van Klaveren, Arie
4	Van Canneyt Dairy	Van Klaveren, Wilhelmina
5	Van Canneyt, Maurice	Van Klaveren, William
6	Van Canneyt, Wilmer	Van Leeuwen, Arie C.
7	Van Dam, Bas	Van Leeuwen, Arie C.
8	Van Dam, Isabelle	Van Leeuwen, Arlan
9	Van Dam, Nellie	Van Leeuwen, Clara G.
10	Van Den Berg, Gertrude	Van Leeuwen, Cornelia L.
11	Van Den Berg, Joyce	Van Leeuwen, Harriet
12	Van Den Berg, Marinus	Van Leeuwen, Jack
13	Van Den Berg, Marvin	Van Leeuwen, John
14	Van Der Linden, Ardith	Van Leeuwen, Letie
15	Van Der Linden, John	Van Leeuwen, Margie
16	Van Der Linden, Stanley	Van Leeuwen, Paul
17	Van Der Veen, Kenneth	Van Leeuwen, William A.
18	Van Diest, Anna T.	Van Ravenswaay, Donald
19	Van Diest, Cornelius	Van Ryn Dairy
20	Van Diest, Ernest	Van Ryn, Dick
21	Van Diest, Rena	Van Surksum, Anthonetta
22	Van Dyk, Bart	Van Surksum, John
23	Van Dyk, Jeanette	Van Veen, John
24	Van Foeken, Martha	Van Vliet, Effie
25	Van Foeken, William	Van Vliet, Hendrika
26	Van Hofwegen, Steve	Van Vliet, Hugo
27	Van Hofwegen, Adrian A.	Van Vliet, Klaas
28	Vande Witte, George	Vander Laan, Katie

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Vanden Berge, Gertie	Vander Laan, Martin Jr.
2	Vanden Berge, Gertie	Vander Laan, Tillie
3	Vanden Berge, Jack	Vander Leest, Anna
4	Vanden Berge, Jake	Vander Leest, Ann
5	Vanden Brink, Stanley	Vander Meer, Alice
6	Vander Dussen, Agnes	Vander Meer, Dick
7	Vander Dussen, Cor	Vander Poel, Hank
8	Vander Dussen, Cornelius	Vander Poel, Pete
9	Vander Dussen, Edward	Vander Pol, Irene
10	Vander Dussen, Geraldine Marie	Vander Pol, Margie
11	Vander Dussen, James	Vander Pol, Marines
12	Vander Dussen, John	Vander Pol, William P.
13	Vander Dussen, Nelvina	Vander Schaaf, Earl
14	Vander Dussen, Rene	Vander Schaaf, Elizabeth
15	Vander Dussen, Sybrand Jr.	Vander Schaaf, Henrietta
16	Vander Dussen, Sybrand Sr.	Vander Schaaf, John
17	Vander Dussen Trustees	Vander Schaaf, Ted
18	Vander Eyk, Case Jr.	Vander Stelt, Catherine
19	Vander Eyk, Case Sr.	Vander Stelt, Clarence
20	Vander Feer, Peter	Vander Tuig, Arlene
21	Vander Feer, Rieka	Vander Tuig, Sylvester
22	Vander Laan, Ann	Vander Veen, Joe A.
23	Vander Laan, Ben	Vandervlag, Robert
24	Vander Laan, Bill	Vander Zwan, Peter
25	Vander Laan, Corrie	Vanderford, Betty W.
26	Vander Laan, Henry	Vanderford, Claud R.
27	Vander Laan, James	Vanderham, Adrian
28	Vanderham, Cornelius	Vestal, J. Howard

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Vanderham, Cornelius P.	Visser, Gerrit
2	Vanderham, Cory	Visser, Grace
3	Vanderham, E. Jane	Visser, Henry
4	Vanderham, Marian	Visser, Jess
5	Vanderham, Martin	Visser, Louie
6	Vanderham, Pete C.	Visser, Neil
7	Vanderham, Wilma	Visser, Sam
8	Vasquez, Eleanor	Visser, Stanley
9	Veenendaal, Evert	Visser, Tony D.
10	Veenendaal, John H.	Visser, Walter G.
11	Veiga, Dominick, Sr.	Von Der Ahe, Fredric T.
12	Verbree, Jack	Von Euw, George
13	Verbree, Tillie	Von Euw, Majorie
14	Verger, Bert	Von Lusk, a limited partnership
15	Verger, Betty	Voortman, Anna Marie
16	Verhoeven, Leona	Voortman, Edward
17	Verhoeven, Martin	Voortman, Edwin J.
18	Verhoeven, Wesley	Voortman, Gertrude Dena
19	Vermeer, Dick	Wagner, Richard H.
20	Vermeer, Jantina	Walker, Carole R.
21	Vernola Ranch	Walker, Donald E.
22	Vernola, Anthonietta	Walker, Wallace W.
23	Vernola, Anthony	Wardle, Donald M.
24	Vernola, Frank	Warner, Dillon B.
25	Vernola, Mary Ann	Warner, Minnie
26	Vernola, Pat F.	Wassenaar, Peter W.
27	Vestal, Frances Lorraine	Waters, Michael
28	Weeda, Adriana	Wiersma, Jake

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Weeda, Daniel	Wiersma, Otto
2	Weeks, O. L.	Wiersma, Pete
3	Weeks, Verona E.	Winchell, Verne H., Trustee
4	Weidman, Maurice	Wind, Frank
5	Weidman, Virginia	Wind, Fred
6	Weiland, Adaline I.	Wind, Hilda
7	Weiland, Peter J.	Wind, Johanna
8	Wesselink, Jules	Woo, Frank
9	West, Katharine R.	Woo, Sem Gee
10	West, Russel	Wybenga, Clarence
11	West, Sharon Ann	Wybenga, Gus
12	Western Horse Property	Wybenga, Gus K.
13	Westra, Alice	Wybenga, Sylvia
14	Westra, Henry	Wynja, Andy
15	Westra, Hilda	Wynja, Iona F.
16	Westra, Jake J.	Yellis, Mildred
17	Weststeyn, Freida	Yellis, Thomas E.
18	Weststeyn, Pete	Ykema-Harmsen Dairy
19	Whitehurst, Louis G.	Ykema, Floris
20	Whitehurst, Pearl L.	Ykema, Harriet
21	Whitmore, David L.	Yokley, Betty Jo
22	Whitmore, Mary A.	Yokley, Darrell A.
23	Whitney, Adolph M.	Zak, Zan
24	Wiersema, Harm	Zivelonghi, George
25	Wiersema, Harry	Zivelonghi, Margaret
26	Wiersma, Ellen H.	Zwaagstra, Jake
27	Wiersma, Gladys J.	Zwaagstra, Jessie M.
28		Zwart, Case



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

NON-PRODUCER WATER DISTRICTS

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- Chino Basin Municipal Water District
- Chino Basin Water Conservation District
- Pomona Valley Municipal Water District
- Western Municipal Water District of Riverside County

DEFAULTING OVERLYING AGRICULTURAL PRODUCERS

- |                   |                     |
|-------------------|---------------------|
| Cheryl L. Bain    | Roy W. Lantis       |
| Warren Bain       | Sharon I. Lantis    |
| John M. Barcelona | Frank Lorenz        |
| Letty Bassler     | Dagney H. MacDonald |
| John Brazil       | Frank E. Martin     |
| John S. Briano    | Ruth C. Martin      |
| Lupe Briano       | Connie S. Mello     |
| Paul A. Briano    | Naldiro J. Mello    |
| Tillie Briano     | Felice Miller       |
| Arnie B. Carlson  | Ted Miller          |
| John Henry Fikse  | Masao Nerio         |
| Phyllis S. Fikse  | Tom K. Nerio        |
| Lewellyn Flory    | Toyo Nerio          |
| Mary I. Flory     | Yuriko Nerio        |
| L. H. Glazer      | Harold L. Rees      |
| Dorothy Goodman   | Alden G. Rose       |
| Sidney D. Goodman | Claude Rouleau, Jr. |
| Frank Grossi      | Patricia M. Rouleau |
| Harada Brothers   | Schultz Enterprises |
| Ellen Hettinga    | Albert Shaw         |

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Hein Hettinga	Lila Shaw
2	Dick Hofstra, Jr.	Cathy M. Stewart
3	Benjamin M. Hughey	Marvin C. Stewart
4	Frieda L. Hughey	Betty Ann Stone
5	Guillaume Indart	John B. Stone
6	Ellwood B. Johnston, Trustee	Vantoll Cattle Co., Inc.
7	Perry Kruckenberg, Jr.	Catherine Verburg
8	Martin Verburg	
9	Donna Vincent	
10	Larry Vincent	
11	Cliff Wolfe & Associates	
12	Ada M. Woll	
13	Zarubica Co.	

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**EXHIBIT "D"**

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**OVERLYING NON-AGRICULTURAL RIGHTS**

<u>Party</u>	<u>Total Overlying Non-Agricultural Rights (Acre-Feet)</u>	<u>Share of Safe Yield (Acre-Feet)</u>
Ameron Steel Producers, Inc.	125	97.858
County of San Bernardino (Airport)	171	133.870
Conrock Company	406	317.844
Kaiser Steel Corporation	3,743	2,930.274
Red Star Fertilizer	20	15.657
Southern California Edison Co.	1,255	982.499
Space Center, Mira Loma	133	104.121
Southern Service Co. dba Blue Seal Linen	24	18.789
Sunkist Growers, Inc.	2,393	1,873.402
Carlsberg Mobile Home Properties, Ltd '73	593	464.240
Union Carbide Corporation	546	427.446
Quaker Chemical Co.	<u>0</u>	<u>0.000</u>
Totals	9,409	7,366.000

**EXHIBIT "E"**

**APPROPRIATIVE RIGHTS**

<u>Party</u>	<u>Appropriative Right (Acre Feet)</u>	<u>Share of Initial Operating Safe Yield (Acre-Feet)</u>	<u>Share of Operating Safe Yield (Percent)</u>
City of Chino	5,271.7	3,670.067	6.693
City of Norco	289.5	201.545	0.368
City of Ontario	16,337.4	11,373.816	20.742
City of Pomona	16,110.5	11,215.852	20.454
City of Upland	4,097.2	2,852.401	5.202
Cucamonga County Water District	4,431.0	3,084.786	5.626
Jurupa Community Services District	1,104.1	768.655	1.402
Monte Vista County Water District	5,958.7	4,148.344	7.565
West San Bernardino County Water District	925.5	644.317	1.175
Etiwanda Water Company	768.0	534.668	0.975
Feldspar Gardens Mutual Water Company	68.3	47.549	0.087
Fontana Union Water Company	9,188.3	6,396.736	11.666
Marygold Mutual Water Company	941.3	655.317	1.195
Mira Loma Water Company	1,116.0	776.940	1.417
Monte Vista Irrigation Company	972.1	676.759	1.234
Mutual Water Company of Glen Avon Heights	672.2	467.974	0.853
Park Water Company	236.1	164.369	0.300
Pomona Valley Water Company	3,106.3	2,162.553	3.944
San Antonio Water Company	2,164.5	1,506.888	2.748
Santa Ana River Water Company	1,869.3	1,301.374	2.373
Southern California Water Company	1,774.5	1,235.376	2.253
West End Consolidated Water Company	<u>1,361.3</u>	<u>947.714</u>	<u>1.728</u>
<b>TOTAL</b>	<b>78,763.8</b>	<b>55,834.000</b>	<b>100.000</b>

**EXHIBIT "F"**

**OVERLYING (AGRICULTURAL) POOL**

POOLING PLAN

1. Membership in Pool. The State of California and all producers listed in Exhibit "C" shall be the initial members of this pool, which shall include all producers of water for overlying uses other than industrial or commercial purposes.

2. Pool Meetings. The members of the pool shall meet annually, in person or by proxy, at a place and time to be designated by Watermaster for purposes of electing members of the Pool Committee and conducting any other business of the pool. Special meetings of the membership of the pool may be called and held as provided in the rules of the pool.

3. Voting. All voting at meetings of pool members shall be on the basis of one vote for each 100 acre feet or any portion thereof of production from Chino Basin during the preceding year, as shown by the records of Watermaster.

4. Pool Committee. The Pool Committee for this pool shall consist of not less than nine (9) representatives selected at large by members of the pool. The exact number of members of the Pool Committee in any year shall be as determined by majority vote of the voting power of members of the pool in attendance at the annual pool meeting. Each member of the Pool Committee shall have one vote and shall serve for a two-year term. The members first elected shall classify themselves by lot so that approximately one-half serve an initial one-year term. Vacancies during any term shall be filled by a majority of the remaining members of the Pool Committee.

5. Advisory Committee Representatives. The number of representatives of the Pool Committee on the Advisory Committee shall be as provided in the rules of the pool from time to time but not exceeding ten (10). The voting power of the pool on the Advisory Committee shall be apportioned and exercised as determined from time to time by the Pool Committee.

6. Replenishment Obligation. The pool shall provide funds for replenishment of any production by persons other than members of the Overlying Non-Agricultural Pool or Appropriator Pool,

in excess of the pool's share of Safe Yield. During the first five (5) years of operations of the Physical Solution, reasonable efforts shall be made by the Pool Committee to equalize annual assessments.

7. Assessments. All assessments in this pool (whether for replenishment water cost or for pool administration or the allocated share of Watermaster administration) shall be in an amount uniformly applicable to all production in the pool during the preceding year or calendar quarter. Provided, however, that the Agricultural Pool Committee, may recommend to the Court modification of the method of assessing pool members, inter se, if the same is necessary to attain legitimate basin management objectives, including water conservation and avoidance of undesirable socio-economic consequences. Any such modification shall be initiated and ratified by one of the following methods:

(a) Excess Production. - In the event total pool production exceeds 100,000 acre feet in any year, the Pool Committee shall call and hold a meeting, after notice to all pool members, to consider remedial modification of the assessment formula.

(b) Producer Petition. - At any time after the fifth full year of operation under the Physical Solution, a petition by ten percent (10%) of the voting power or membership of the Pool shall compel the holding of a noticed meeting to consider revision of said formula of assessment for replenishment water.

In either event, a majority action of the voting power in attendance at such pool members' meeting shall be binding on the Pool Committee.

8. Rules. - The Pool Committee shall adopt rules for conducting meetings and affairs of the committee and for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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**EXHIBIT "G"**

**OVERLYING (NON-AGRICULTURAL) POOL**

**POOLING PLAN**

1. Membership in Pool. The initial members of the pool, together with the decreed share of the Safe Yield of each, are listed in Exhibit "D". Said pool includes producers of water for overlying industrial or commercial non-agricultural purposes, or such producers within the Pool who may hereafter take water pursuant to Paragraph 8 hereof.

2. Pool Committee. The Pool Committee for this pool shall consist of one representative designated by each member of the pool. Voting on the committee shall be on the basis of one vote for each member, unless a volume vote is demanded, in which case votes shall be allocated as follows:

The volume voting power on the Pool Committee shall be 1,484 votes. Of these, 742 votes shall be allocated on the basis of one vote for each ten (10) acre feet or fraction thereof of decreed shares in Safe Yield. (See Exhibit "D"). The remaining 742 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year.<sup>8</sup>

**Affirmative action of the Committee shall require a majority of the voting power of the members in attendance, provided that it includes concurrence by at least one-third of its total members.<sup>9</sup>**

3. Advisory Committee Representatives. At least three (3) members of the Pool Committee shall be designated by said committee to serve on the Advisory Committee. The exact number of such representatives at any time shall be as determined by the Pool Committee. The voting power of the pool shall be exercised in the Advisory Committee as a unit, based upon the vote of a majority of said representatives.

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<sup>8</sup> Or production assessments paid under Water Code Section 72140 et seq., as to years prior to the second year of operation under the Physical Solution hereunder.

<sup>9</sup> Order dated October 8, 2010.

4. Replenishment Obligation. The pool shall provide funds for replenishment of any production in excess of the pool's share of Safe Yield in the preceding year.

5. Assessments.<sup>10</sup>

(a) Replenishment Assessments. Each member of this pool shall pay an assessment equal to the cost of replenishment water times the number of acre feet of production by such producer during the preceding year in excess of (a) his decreed share of the Safe Yield, plus (b) any carry-over credit under Paragraph 7 hereof.

(b) Administrative Assessments. In addition, the cost of the allocated share of Watermaster administration expense shall be recovered on an equal assessment against each acre foot of production in the pool during such preceding fiscal year or calendar quarter; and in the case of Pool members who take substitute ground water as set forth in Paragraph 8 hereof, such producer shall be liable for its share of administration assessment, as if the water so taken were produced, up to the limit of its decreed share of Safe Yield.

(c) Special Project OBMP Assessment. Each year, every member of this Pool will dedicate ten (10) percent of their annual share of Operating Safe Yield to Watermaster or in lieu thereof Watermaster will levy a Special Project OBMP Assessment in an amount equal to ten percent of the Pool member's respective share of Safe Yield times the then-prevailing MWD Replenishment Rate.

6. Assignment. Rights herein decreed are appurtenant to *that* land and are only assignable with the land for overlying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) *the members of the pool shall have the right to Transfer or lease their quantified production rights within the pool or to*

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<sup>10</sup> Order dated December 21, 2007.



***Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.***<sup>11</sup>

7. Carry-over. Any member of the pool who produces less than its assigned water share of Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any pool member exceeds its share of Safe Yield, such member shall, as a condition of preserving such surplus carryover, execute a storage agreement with Watermaster.

8. Substitute Supplies. To the extent that any Pool member, at the request of Watermaster and with the consent of the Advisory Committee, takes substitute surface water in lieu of producing ground water otherwise subject to production as an allocated share of Safe Yield, said party shall nonetheless remain a member of this Pool.

9. Physical Solution Transfers. **All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom except that for the term of the Peace Agreement the members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution: (i) within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; (iii) in conformance with the procedures described in Paragraph I of the Purchase and Sale Agreement for the Purchase of Water by Watermaster from Overlying (Non-Agricultural Pool dated June 30, 2007; or (iv) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines and those procedures Watermaster may further provide in Watermaster's Rules and Regulations:**

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<sup>11</sup> Order dated September 28, 2000 and Order dated April 19, 2001.

(a) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;

(b) Except as they may be limited by paragraph 9(e) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price established in 9(d) below. Each Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

(c) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9(b) above and at the price established in Paragraph 9(d) below. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.

(d) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (b) and (c) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at 92% of the then-prevailing "MWD Replenishment Rate" and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.

(e) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the

**Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.**

**(f) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.**

**(g) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9(a)-(c) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.**

**(h) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6 above, or to affect the rights of any Party under a valid assignment.**

**910. Rules.** The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

**EXHIBIT "H"**  
**APPROPRIATIVE POOL**  
POOLING PLAN

1. Qualification for Pool. Any city, district or other public entity and public utility -- either regulated under Public Utilities Commission jurisdiction, or exempt therefrom as a non-profit mutual water company (other than those assigned to the Overlying (Agricultural) Pool) -- shall be a member of this pool. All initial members of the pool are listed in Exhibit "E", together with their respective appropriative rights and acre foot allocation and percentage shares of the initial and subsequent Operating Safe Yield.

2. Pool Committee. The Pool Committee shall consist of one (1) representative appointed by each member of the Pool.

3. Voting. The total voting power on the Pool Committee shall be 1,000 votes. Of these, 500 votes shall be allocated in proportion to decreed percentage shares in Operating Safe Yield. The remaining 500 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year. Routine business of the Pool Committee may be conducted on the basis of one vote per member, but upon demand of any member a weighted vote shall be taken. Affirmative action of the Committee shall require a majority of the voting power of members in attendance, provided that it includes concurrence by at least one-third of its total members.

4. Advisory Committee Representatives. **Members of the Pool Committee shall be designated to represent this pool on the Advisory Committee *on the following basis: Each major appropriator, i.e., the owner of an adjudicated appropriative right in excess of 3,000 acre feet, or each appropriator that produces in excess of 3,000 acre feet based upon the prior year's production, shall be entitled to one representative. Two additional representatives of the Appropriative Pool on the Advisory Committee shall be elected at large by the remaining members of the pool. The voting power of the Appropriative Pool on the Advisory Committee shall be apportioned between the major appropriator representatives in proportion to their respective voting power in the Pool Committee. The two representatives of the remaining appropriators shall exercise equally the voting power proportional to the Pool Committee voting power of said***

remaining appropriators; provided, however, that if any representative fails to attend an Advisory Committee meeting, the voting power of that representative shall be allocated among the representatives of the Appropriative Pool in attendance in the same proportion as their respective voting powers.<sup>12</sup>

5. Replenishment Obligation. The pool shall provide funds for purchase of replenishment water to replace any production by the pool in excess of Operating Safe Yield during the preceding year.

6. Administrative Assessment. Costs of administration of this pool and its share of general Watermaster expense shall be recovered by a uniform assessment applicable to all production during the preceding year.

7. Replenishment Assessment. The cost of replenishment water required to replace production from Chino Basin in excess of Operating Safe Yield in the preceding year shall be allocated and recovered as follows:

(a) For production, other than for increased export,

within CBMWD or WMWD:

(1) Gross Assessment. 15% of such replenishment water costs shall be recovered by a uniform assessment against all production of each appropriator producing in said area during the preceding year.

(2) Net Assessment. The remaining 85% of said costs shall be recovered by a uniform assessment on each acre foot of production from said area by each such appropriator in excess of his allocated share of Operating Safe Yield during said preceding year.

(b) For production which is exported for use outside Chino Basin in excess of maximum export in any year through 1976, such increased export production shall be assessed against the exporting appropriator in an amount sufficient to purchase replenishment water from CBMWD or WMWD in the amount of such excess.

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<sup>12</sup> Order dated September 18, 1996.

(c) For production within SBVMWD or PVMWD:

By an assessment on all production in excess of an appropriator's share of Operating Safe Yield in an amount sufficient to purchase replenishment water through SBVMWD or MWD in the amount of such excess.

8. Socio-Economic Impact Review. The parties have conducted certain preliminary socio-economic impact studies. Further and more detailed socio-economic impact studies of the assessment formula and its possible modification shall be undertaken for the Appropriator Pool by Watermaster no later than ten (10) years from the effective date of this Physical Solution, or whenever total production by this pool has increased by 30% or more over the decreed appropriative rights, whichever is first.

9. Facilities Equity Assessment. Watermaster may, upon recommendation of the Pool Committee, institute proceedings for levy and collection of a Facilities Equity Assessment for the purposes and in accordance with the procedures which follow:

(a) Implementing Circumstances. - There exist several sources of supplemental water available to Chino Basin, each of which has a differential cost and quantity available. The optimum management of the entire Chino Basin water resource favors the maximum use of the lowest cost supplemental water to balance the supplies of the Basin, in accordance with the Physical Solution. The varying sources of supplemental water include importations from MWD and SBVMWD, importation of surface and ground water supplies from other basins in the immediate vicinity of Chino Basin, and utilization of reclaimed water. In order to fully utilize any of such alternate sources of supply, it will be essential for particular appropriators having access to one or more of such supplies to have invested, or in the future to invest, directly or indirectly, substantial funds in facilities to obtain and deliver such water to an appropriate point of use. To the extent that the use of less expensive alternative sources of supplemental water can be maximized by the inducement of a Facilities Equity Assessment, as herein provided, it is to the long-term benefit of the entire basin that such assessment be authorized and levied by Watermaster.

(b) Study and Report. - At the request of the Pool Committee, Watermaster shall undertake a survey study of the utilization of alternate supplemental supplies by

members of the Appropriative Pool which would not otherwise be utilized and shall prepare a report setting forth the amount of such alternative supplies being currently utilized, the amount of such supplies which could be generated by activity within the pool, and the level of cost required to increase such uses and to optimize the total supplies available to the basin. Said report shall contain an analysis and recommendation for the levy of a necessary Facilities Equity Assessment to accomplish said purpose.

(c) Hearing. - If the said report by Watermaster contains a recommendation for imposition of a Facilities Equity Assessment, and the Pool Committee so requests, Watermaster shall notice and hold a hearing not less than 60 days after distribution of a copy of said report to each member of the pool, together with a notice of the hearing date. At such hearing, evidence shall be taken with regard to the necessity and propriety of the levy of a Facilities Equity Assessment and full findings and decision shall be issued by Watermaster.

(d) Operation of Assessment. - If Watermaster determines that it is appropriate that a Facilities Equity Assessment be levied in a particular year, the amount of additional supplemental supplies which should be generated by such assessment shall be estimated. The cost of obtaining such supplies, taking into consideration the investment in necessary facilities shall then be determined and spread equitably among the producers within the pool in a manner so that those producers not providing such additional lower cost supplemental water, and to whom a financial benefit will result, may bear a proportionate share of said costs, not exceeding said benefit; provided that any producer furnishing such supplemental water shall not thereby have its average cost of water in such year reduced below such producer's average cost of pumping from the Basin. In so doing, Watermaster shall establish a percentage of the total production by each party which may be produced without imposition of a Facilities Equity Assessment. Any member of the pool producing more water than said percentage shall pay such Facilities Equity Assessment on any such excess production. Watermaster is authorized to transmit and pay the proceeds of such Facilities Equity Assessment to those producers who take less than their share of Basin water by reason of furnishing a higher percentage of their requirements through use of supplemental water.

10. Unallocated Safe Yield Water. To the extent that, in any 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:

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

(1) to supplement, in 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.

(b) Conversion Claims.<sup>13</sup> The following procedures may be utilized by any appropriator:

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

(2) **Record of Water Service Conversion**. Any appropriator who undertakes to permanently provide water service to lands *subject to conversion* may report such intent to change water service to Watermaster. Watermaster *should* thereupon verify such change in water service and shall maintain a record and account for each appropriator of the total acreage involved. *Should, at any time, converted acreage return to water service from the Overlying (Agricultural) Pool, Watermaster shall return such acreage to unconverted status*

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<sup>13</sup> Order dated November 17, 1995.



*and correspondingly reduce or eliminate any allocation accorded to the appropriator involved.*

**(3) Allocation of Safe Yield Rights**

**(i) For the term of the Peace Agreement 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.<sup>14</sup>**

**(ii) In any year in which the unallocated Safe Yield water from the Overlying (Agricultural) Pool is not sufficient to satisfy all outstanding conversion claims pursuant to subparagraph (i) herein above, Watermaster shall establish allocation percentages for each appropriator with conversion claims. The percentages shall be based upon the ratio of the total of such converted acreage approved and recorded for each appropriators's account in comparison to the total of converted acreage approved and recorded for all appropriators. Watermaster shall apply such allocation percentage for each appropriator to the total unallocated Safe Yield water available for conversion claims to derive the amount allocable to each appropriator.**

**(4) Notice and Allocation. Notice of the special allocation of Safe Yield water pursuant to conversion claims shall be given to each appropriator and shall be treated for purposes of this Physical Solution as an addition to such appropriator's share of the Operating Safe Yield for the particular year only.**

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<sup>14</sup> Order dated September 28, 2000 and Order dated April 19, 2001.

**(5) Administrative Costs. Any costs of Watermaster attributable to the administration of such special allocations and conversion claims shall be assessed against the appropriators participating in such reporting, apportioned in accordance with the total amount of converted acreage held by each appropriator participating in the conversion program.**

11. In Lieu Procedures. There are, or may develop, certain areas within Chino Basin where good management practices dictate that recharge of the basin be accomplished, to the extent practical, by taking surface supplies of supplemental water in lieu of ground water otherwise subject to production as an allocated share of Operating Safe Yield.

(a) Method of Operation. - An appropriator producing water within such designated in lieu area who is willing to abstain for any reason from producing any portion of such producer's share of Operating Safe Yield in any year may offer such unpumped water to Watermaster. In such event, Watermaster shall purchase said water in place, in lieu of spreading replenishment water, which is otherwise required to make up for over production. The purchase price for in lieu water shall be the lesser of:

- (1) Watermaster's current cost of replenishment water, whether or not replenishment water is currently then obtainable, plus the cost of spreading; or
- (2) The cost of supplemental surface supplies to the appropriator, less
  - a. said appropriator's average cost of ground water production, and
  - b. the applicable production assessment were the water produced.

Where supplemental surface supplies consist of MWD or SBVMWD supplies, the cost of treated, filtered State water from such source shall be deemed the cost of supplemental surface supplies to the appropriator for purposes of such calculation.

In any given year in which payments may be made pursuant to a Facilities Equity Assessment, as to any given quantity of water the party will be entitled to payment under this section or pursuant to the Facilities Equity Assessment, as the party elects, but not under both.

(b) Designation of In Lieu Areas. - The first in lieu area is designated as the "In Lieu Area No. 1" and consists of an area wherein nitrate levels in the ground water generally exceed 45 mg/l, and is shown on Exhibit "J" hereto. Other in lieu areas may be designated by subsequent order of Watermaster upon recommendation or approval by Advisory Committee. Said in lieu areas may be enlarged, reduced or eliminated by subsequent orders; provided, however, that designation of In Lieu Areas shall be for a minimum fixed term sufficient to justify necessary capital investment. In Lieu Area No. 1 may be enlarged, reduced or eliminated in the same manner, except that any reduction of its original size or elimination thereof shall require the prior order of Court.

12. Carry-over. Any appropriator who produces less than his assigned share of Operating Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any appropriator exceeds its share of Operating Safe Yield, such appropriator shall, as a condition of preserving such surplus carry-over, execute a storage agreement with Watermaster. Such appropriator shall have the option to pay the gross assessment applicable to such carry-over in the year in which it accrued.

13. Assignment, Transfer and Lease. Appropriative rights, and corresponding shares of Operating Safe Yield, may be assigned or may be leased or licensed to another appropriator for exercise in a given year. Any transfer, lease or license shall be ineffective until written notice thereof is furnished to and approved as to form by Watermaster, in compliance with applicable Watermaster rules. Watermaster shall not approve transfer, lease or license of a right for exercise in an area or under conditions where such production would be contrary to sound basin management or detrimental to the rights or operations of other producers.

14. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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**EXHIBIT "I"**

**ENGINEERING APPENDIX**

1. Basin Management Parameters. In the process of implementing the physical solution for Chino Basin, Watermaster shall consider the following parameters:

(a) Pumping Patterns. - Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized recharge of replenishment water, insofar as such result may be practically avoided.

(b) Water Quality. - Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.

(c) Economic Considerations. - Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters.

**2. Hydraulic Control and Re-Operation. In accordance with the purpose and objective of the Physical Solution to "establish a legal and practical means for making the maximum reasonable beneficial use of the waters of the Chino Basin" (paragraph 39) including but not limited to the use and recapture of reclaimed water (paragraph 49(a) ) and the identified Basin Management Parameters set forth above, Watermaster will manage the Basin to secure and maintain Hydraulic Control through controlled overdraft.**

(a) **Hydraulic Control.** "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is more fully described and set forth in Attachment I-1 to this Engineering Appendix. By obtaining Hydraulic Control, Watermaster will ensure that the water management activities in the Chino North Management Zone do not cause

materially adverse impacts to the beneficial uses of the Santa Ana River downstream of Prado Dam.

(b) **Re-Operation.** “Re-Operation” means the controlled overdraft of the Basin by the managed withdrawal of groundwater for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 acre-feet authorized by paragraph 3 below, to 600,000 acre feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution.

[1] The increase in the controlled overdraft herein is separate from and in addition to the 200,000 acre-feet of accumulated overdraft authorized in paragraph 3(a) and 3(b) below over the period of 1978 through 2017.

[2] “Desalters” means the Chino I Desalter, the Chino I Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin water, including extraction wells and transmission facilities for delivery of groundwater to the Desalter. Desalter treatment and delivery facilities for the desalted water include pumping and storage facilities and treatment and disposal capacity in the Santa Ana Regional Interceptor.

[3] The groundwater Produced through controlled overdraft pursuant to Re-Operation does not constitute New Yield or Operating Safe Yield and it is made available under the Physical Solution for the express purpose of satisfying some or all of the groundwater Production by the Desalters until December 31, 2030. (“Period of Re-Operation”).

[4] The operation of the Desalters, the Production of groundwater for the Desalters and the use of water produced by the Desalters pursuant to Re-Operation are

subject to the limitations that may be set forth in Watermaster Rules and Regulations for the Desalters.

(5) Watermaster will update its Recharge Master Plan and obtain Court approval of its update, to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan shall contain recharge projections and summaries of the projected water supply availability as well as the physical means to accomplish recharge projections. The Recharge Master Plan may be amended from time to time with Court approval.

(6) Re-Operation and Watermaster's apportionment of controlled overdraft in accordance with the Physical Solution will not be suspended in the event that Hydraulic Control is secured in any year before the full 400,000 acre-feet has been Produced without Replenishment, so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures that will avoid unreasonable and unmitigated material physical harm to a party or to the Basin and that equitably distributes the cost of any mitigation attributable to the identified contingencies; and (ii) Watermaster is in substantial compliance with a Court approved Recharge Master Plan.<sup>15</sup>

3. Operating Safe Yield. Operating Safe Yield in any year shall consist of the Appropriate Pool's share of Safe Yield of the Basin, plus any controlled overdraft of the Basin which Watermaster may authorize. In adopting the Operating Safe Yield for any year, Watermaster shall be limited as follows:

(a) Accumulated Overdraft. - During the operation of this Judgment and Physical Solution, the overdraft accumulated from and after the effective date of the Physical Solution and

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<sup>15</sup> Order dated December 21, 2007.

resulting from an excess of Operating Safe Yield over Safe Yield shall not exceed 200,000 acre feet.

(b) Quantitative Limits. - In no event shall Operating Safe Yield in any year be less than the Appropriative Pool's share of Safe Yield, nor shall it exceed such share of Safe Yield by more than 10,000 acre feet. The initial Operating Safe Yield is hereby set at 54,834 acre feet per year. Operating Safe Yield shall not be changed upon less than five (5) years' notice by Watermaster. Nothing contained in this paragraph shall be deemed to authorize, directly or indirectly, any modification of the allocation of shares in Safe Yield to the overlying pools, as set forth in Paragraph 44 of the Judgment.

4. Ground Water Storage Agreements. Any agreements authorized by Watermaster for storage of supplemental water in the available ground water storage capacity of Chino Basin shall include, but not be limited to:

- (a) The quantities and term of the storage right.
- (b) A statement of the priority or relation of said right, as against overlying or Safe Yield uses, and other storage rights.
- (c) The procedure for establishing delivery rates, schedules and procedures which may include:
  - [1] spreading or injection, or
  - [2] in lieu deliveries of supplemental water for direct use.
- (d) The procedures for calculation of losses and annual accounting for water in storage by Watermaster.
- (e) The procedures for establishment and administration of withdrawal schedules, locations and methods.

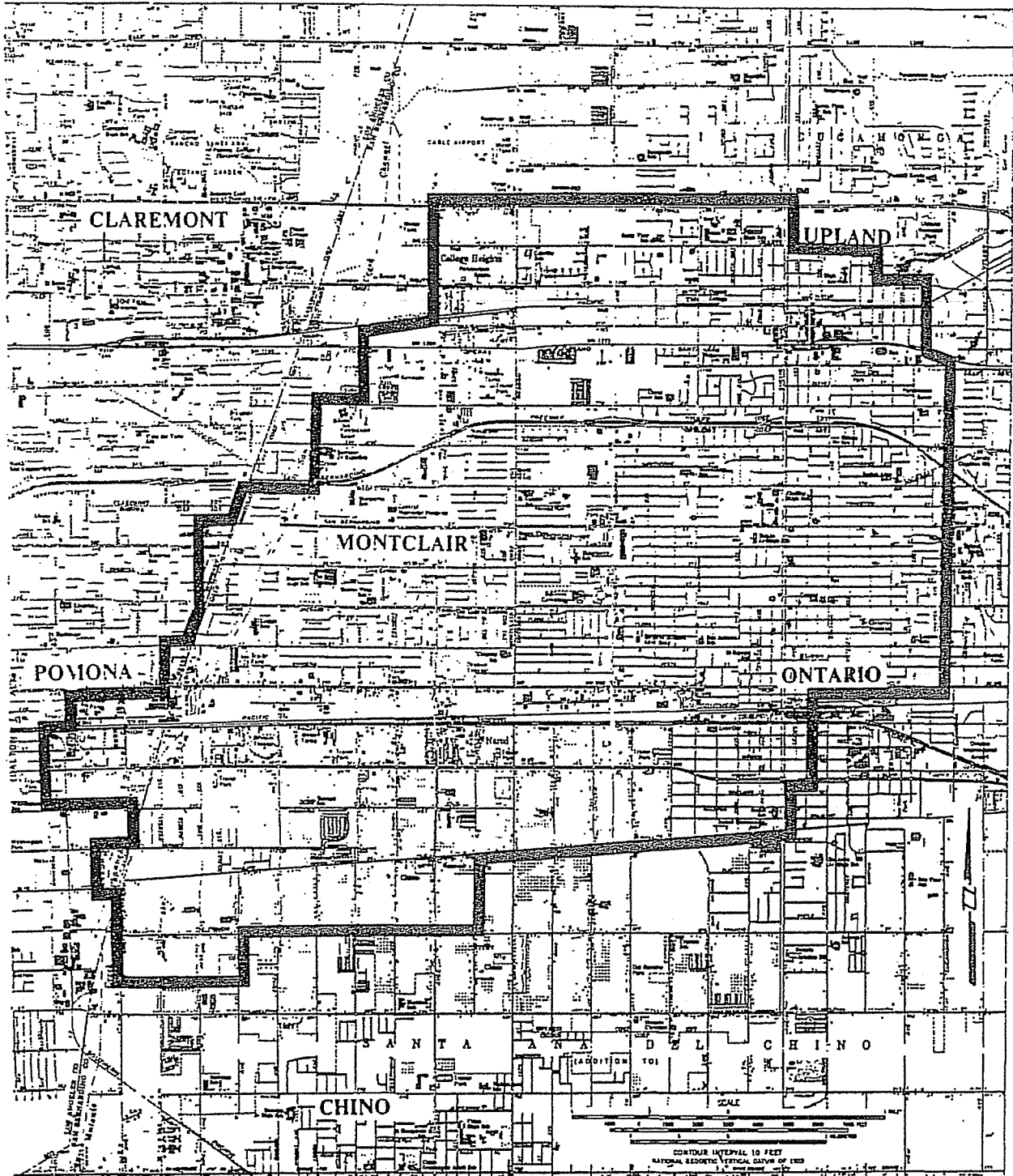
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CHINO BASIN  
IN LIEU AREA NO. 1

EXHIBIT "J"



**EXHIBIT "K"**  
**LEGAL DESCRIPTION**  
**OF CHINO BASIN**

Preamble

All of the townships and ranges referred to in the following legal description are the San Bernardino Base and Meridian. Certain designated sections are implied as the System of Government Surveys may be extended where not established. Said sections are identified as follows:

Section 20, T1N, R8W is extended across Rancho Cucamonga;

Section 36, T1N, R8W is extended across the City of Upland;

Sections 2,3, and 4, T1S, R7W are extended across Rancho Cucamonga;

Section 10, T1S, R8W is extended across the City of Claremont;

Sections 19, 20, 21, 30, 31 and 32, T1S, R8W are extended across the City of Pomona;

Sections 4, 5, and 28, T2S, R8W are extended across Rancho Santa Ana Del Chino;

Sections 15 and 16, T3S, R7W are extended across Rancho La Sierra; and

Sections 17 and 20, T3S, R7W are extended across Rancho El Rincon.

Description

Chino Basin is included within portions of the Counties of San Bernardino, Riverside and Los Angeles, State of California, bounded by a continuous line described as follows:

EXHIBIT "K"

BEGINNING at the Southwest corner of Lot 241 as shown on Map of Ontario Colony Lands, recorded in Map Book 11, page 6, Office of the County Recorder of San Bernardino County, said corner being the Point of Beginning;

1. Thence Southeasterly to the Southeast corner of Lot 419 of said Ontario Colony Lands;
2. Thence Southeasterly to a point 1300 feet North of the South line and 1300 feet East of the West line of Section 4, T1S, R7W;
3. Thence Easterly to a point on the East line of Section 4, 1800 feet North of the Southeast corner of said Section 4;
4. Thence Easterly to the Southeast corner of the Southwest quarter of the Northeast quarter of Section 3, T1S, R7W;
5. Thence Northeasterly to a point on the North line of Section 2, T1S, R7W, 1400 feet East of the West line of said Section 2;
6. Thence Northeasterly to the Southwest corner of Section 18, T1N, R6W;
7. Thence Northerly to the Northwest corner of said Section 18;
8. Thence Easterly to the Northeast corner of said Section 18;

9. Thence Northerly to the Northwest corner of the Southwest Quarter of Section 8, T1N, R6W;
10. Thence Easterly to the Northeast corner of said Southwest quarter of said Section 8;
11. Thence Southerly to the Southeast corner of said Southwest Quarter of said Section 8;
12. Thence Easterly to the Northeast corner of Section 17, T1N, R6W;
13. Thence Easterly to the Northeast corner of Section 16, T1N, R6W;
14. Thence Southeasterly to the Northwest corner of the Southeast quarter of Section 15, T1N, R6W;
15. Thence Easterly to the Northeast corner of said Southeast quarter of said Section 15;
16. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 23, T1N, R6W;
17. Thence Southeasterly to the Northwest corner of Section 25, T1N, R6W;
18. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 31, T1N, R5W;
19. Thence Southeasterly to the Northeast corner of the Northwest quarter of Section 5, T1S, R5W;
20. Thence Southeasterly to the Southeast corner of Section 4, T1S, R5W;
21. Thence Southeasterly to the Southeast corner of the Southwest quarter of Section 11, T1S, R5W;
22. Thence Southwesterly to the Southwest corner of Section 14, T1S, R5W;

23. Thence Southwest to the Southwest corner of Section 22, T1S, R5W;
24. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 6, T2S, R5W;
25. Thence Southeasterly to the Northeast corner of Section 18, T2S, R5W;
26. Thence Southwesterly to the Southwest corner of the Southeast quarter of Section 13, T2S, R6W;
27. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 26, T2S, R6W;
28. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 26;
29. Thence Northerly to the Northwest corner of said Section 26;
30. Thence Westerly to the Southwest corner of Section 21, T2S, R6W;
31. Thence Southerly to the Southeast corner of Section 29, T2S, R6W;
32. Thence Westerly to the Southeast corner of Section 30, T2S, R6W;
33. Thence Southwesterly to the Southwest corner of Section 36, T2S, R7W;
34. Thence Southwesterly to the Southeast corner of Section 3, T3S, R7W;
35. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 10, T3S, R7W;

36. Thence Southerly to the Northeast corner of the Northwest quarter of Section 15, T3S, R7W;
37. Thence Southwesterly to the Southeast corner of the Northeast quarter of Section 16, T3S, R7W;
38. Thence Southwesterly to the Southwest corner of said Section 16;
39. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 20, T3S, R7W;
40. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 20;
41. Thence Northerly to the Northwest corner of Section 17, T3S, R7W;
42. Thence Westerly to the Southwest corner of Section 7, T3S, R7W;
43. Thence Northerly to the Southwest corner of Section 6, T3S, R7W;
44. Thence Westerly to the Southwest corner of Section 1, T3S, R8W;
45. Thence Northerly to the Southeast corner of Section 35, T2S, R8W;
46. Thence Northwesterly to the Northwest corner of said Section 35;
47. Thence Northerly to the Southeast corner of Lot 33, as shown on Map of Tract 3193, recorded in Map Book 43, pages 46 and 47, Office of the County Recorder of San Bernardino County;
48. Thence Westerly to the Northwest corner of the Southwest quarter of Section 28, T2S, R8W;

49. Thence Northerly to the Southwest corner of Section 4, T2S, R8W;
50. Thence Westerly to the Southwest corner of Section 5, T2S, R8W;
51. Thence Northerly to the Southwest corner of Section 32, T1S, R8W;
52. Thence Westerly to the Southwest corner of Section 31, T1S, R8W;
53. Thence Northerly to the Southwest corner of Section 30, T1S, R8W;
54. Thence Northeasterly to the Southwest corner of Section 20, T1S, R8W;
55. Thence Northerly to the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 20;
56. Thence Northwesterly to the Northeast corner of the Southeast quarter of the Southeast quarter of the Northwest quarter of Section 19, T1S, R8W;
57. Thence Easterly to the Northwest corner of Section 21, T1S, R8W;
58. Thence Northeasterly to the Southeast corner of the Southwest quarter of the Southwest quarter of Section 10, T1S, R8W;
59. Thence Northeasterly to the Southwest corner of Section 2, T1S, R8W;

60. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 1, T1S, R8W;
61. Thence Northerly to the Northeast corner of the Northwest quarter of the Northeast quarter of Section 36, T1N, R8W;
62. Thence Northerly to the Southeast corner of Section 24, T1N, R8W;
63. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 20, T1N, R7W; and
64. Thence Southerly to the Point of Beginning.

Sections Included

Said perimeter description includes all or portions of the following Townships, Ranges and Sections of San Bernardino Base and Meridian:

T1N, R5W - Sections: 30, 31 and 32

T1N, R6W - Sections: 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35  
and 36

T1N, R7W - Sections: 19, 20, 24, 25, 26, 29, 30, 31, 32, 35 and 36

T1N, R8W - Sections: 25 and 36

T1S, R5W - Sections: 4, 5, 6, 7, 8, 9, 10, 11, 14, 15,16, 17, 18, 19, 20, 21, 22, 28, 29,30, 31 and 32

T1S, R6W - Sections: 1 through 36, inclusive

T1S, R7W - Sections: 1 through 36, inclusive

T1S, R8W - Sections: 1, 2, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,  
32, 33, 34, 35 and 36

T2S, R5W - Sections: 6, 7 and 18

T2S, R6W - Sections: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,  
26, 29, 30 and 31

T2S, R7W - Sections: 1 through 36, inclusive

T2S, R8W - Sections: 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 35 and  
36

T3S, R7W - Sections: 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17 and 20

T3S, R8W - Sections: 1.

SB 565248 v1:038350.0001



# Exhibit B

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 4 2061 Business Center Drive  
 5 Irvine, California 92715  
 6 Telephone: (714) 752-8971  
 7  
 8 CLAYSON, ROTHROCK & MANN  
 9 601 South Main Street  
 10 Corona, California 91720  
 11 Telephone: (714) 737-1910  
 12  
 13 Attorneys for Plaintiff

ORIGINAL FILED  
 JUL 12 1978  
 V. DENNIS WARDLE  
 COUNTY CLERK

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

12 CHINO BASIN MUNICIPAL WATER )  
 13 DISTRICT, )  
 14 )  
 15 Plaintiff, )  
 16 )  
 17 v. )  
 18 )  
 19 CITY OF CHINO, et al. )  
 20 )  
 21 Defendants. )

No. 164327

PLAINTIFF'S POST TRIAL  
 MEMORANDUM

18 Pursuant to order of the Court issued January 27, 1978,  
 19 Judgment was entered in this action whereby the Court retained  
 20 continuing jurisdiction of the matter.

21 To assist the Court in such continuing jurisdiction the  
 22 plaintiff, Chino Basin Municipal Water District, hereby submits  
 23 this Post Trial Memorandum setting forth the statement of the  
 24 nature of the action, and the principle characteristics of the  
 25 Judgment.  
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 28

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I.

NATURE OF ACTION

This action is a plenary adjudication of all rights in and to the ground waters of Chino Basin and its storage capacity. The case is predicated on the fact that the basin is, and since at least 1953 has been, in a condition of overdraft.

The Judgment adjudicated the rights of several hundred overlying landowners, producing in the aggregate over sixty percent of the basin supply for agricultural use, as well as several substantial industrial and commercial producers of water for use on their overlying lands, cities, public water districts, utilities, and mutual water companies all of whom produce water from the basin.

Each of the defendants named in the Judgment is a water producer or other water claimant or public water district within the Chino Basin. Each such defendant has been identified as a member of one of the following three groups:

a. Overlying (Agricultural) Producers -- A party entitled to possession of lands overlying Chino Basin producing water from such basin for overlying agricultural use on said lands.

b. Overlying (Non-Agricultural) Producers -- A party entitled to possession of lands overlying Chino Basin producing water from such basin for overlying use on said lands for other than agricultural purposes.

c. Appropriator -- A party producing water from Chino Basin pursuant to an appropriative or prescriptive right, which right is protected from loss or diminution by prescription by the provisions of Section 1007 of the California Civil Code.

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1 II.

2 HIGHLIGHTS OF THE JUDGMENT

3 A. Declaration of Rights.

4 1. Overlying Agricultural Rights. Because of the nature  
5 of the Physical Solution and the method of assessment proposed for  
6 the exercise of overlying agricultural rights, it was not necessary  
7 to declare individual overlying rights. This avoided a dual problem  
8 First, the total number of parties in the category exceeded 1,200.  
9 Second, the available records and measuring devices for precise  
10 calculation of individual rights was less than adequate. Thus the  
11 rights of all agricultural users have been declared in gross for  
12 all necessary purposes of the Judgment.

13 2. State of California. Because of the several diverse  
14 and complex interests of the State of California, and in view of  
15 the willingness of the State to stipulate to be bound by the  
16 Physical Solution of the Judgment, no attempt was made in the  
17 Judgment to define or categorize the rights of the State of Cali-  
18 fornia. The State and its agencies were subjected by Judgment, to  
19 the Physical Solution, and their rights are treated in gross along  
20 with the overlying agricultural rights.

21 3. Appropriative Rights. The twenty-two parties in the  
22 "Appropriative Pool" have rights which are appropriative and pre-  
23 scriptive in nature. Under full adjudication of such rights to  
24 ground water each would have had differing priorities and quantities.  
25 The complexity of such determination was avoided by resorting to  
26 principles of mutual prescription in the Judgment. Thus, all of  
27 the parties who are appropriators have been adjudged that their  
28 rights have equal priority.

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1           B. Continuing Jurisdiction of Watermaster Provisions.  
2           1. Exemptions from Continuing Jurisdiction. The Court,  
3 with limited exceptions, retained continuing jurisdiction of the  
4 case. Exempted (either entirely or for a specific period of time)  
5 from the Court's continuing jurisdiction was the re-determination  
6 of Safe Yield and modifications of assessment formulas in the  
7 appropriative pool for a period of ten years.  
8           2. Watermaster Organization and Powers. The public  
9 interests in the preservation of the water resource was protected  
10 and assured in the sense that the Court's Watermaster is an over-  
11 lying district, which holds no rights to produce ground water but  
12 is the importing agency bringing supplemental water into the basin.  
13 At the same time, the Watermaster Advisory Committee was created  
14 and given broad powers to review, advise and consent to the action  
15 of the Watermaster, subject to more detailed actions by pool com-  
16 mittees formed to advise, consent and administer the affairs of the  
17 several pools established under the Physical Solution. In these  
18 many provisions, there is a balance created to assure the protection  
19 of the private rights of the parties and the general public interest  
20 in the preservation of the resource.  
21           C. Physical Solution. The Physical Solution is the heart of  
22 the Judgment. It is essential to understanding of the Physical  
23 Solution that it be recognized that there is sufficient water to  
24 meet the needs of all of the parties. This is because there are  
25 significant imported water supplies available to supplement the  
26 native Safe Yield of the basin. However, the supplemental waters  
27 are significantly more expensive than local ground waters. Accord-  
28 ingly, the function of the Judgment, and of its Physical Solution,

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1 is to provide an equitable and feasible method of assuring that a  
2 parties share in the burden of the costs of importing the necessa  
3 supplemental water to achieve a hydrologic balance within Chino  
4 Basin.

5 The Physical Solution provides the mechanics by which the  
6 management plan is implemented. The basic concept of the Physical  
7 Solution is similar to that adopted in the prior ground water  
8 adjudications in Southern California, i.e., the parties are entitl  
9 to produce their requirements for ground water from the basin,  
10 provided that they contribute, by Watermaster assessments, suffici  
11 money to assure purchase of supplemental water to replace any  
12 aggregate production in excess of the Safe Yield. It is in the  
13 detailed formulation of that Physical Solution that some of the  
14 most interesting features of the Judgment were developed.

15 1. Multiple Pool Plans. All of the parties have been  
16 categorized into three major pools. The total Safe Yield of the  
17 basin has been allocated as between the three pools with each pool  
18 assuming a level of reduction in aggregate rights below current  
19 levels of production. Within each pool, by utilizing this format,  
20 the Judgment grouped parties with distinct economic and social  
21 concerns in a manner allowing them to provide the necessary funding  
22 within their particular needs and requirements. For example, it is  
23 of importance to agricultural operations that the total cost of  
24 water be kept to a minimum. It is also important to the entire  
25 area that the Physical Solution be structured so as to encourage  
26 continued commitment of land to agricultural or "green belt" activi  
27 Accordingly, approximately 60% of the Safe Yield of the basin is  
28 committed, in gross, to the Overlying (Agricultural) Pool. Over

1 production by that pool, in the aggregate, is to be replaced by a  
2 gross assessment on all production by all parties within the pool  
3 The net effect of the use of this assessment technique, under cur-  
4 rent conditions, is an assessment in the magnitude of \$5.00 per  
5 acre foot for replenishment water.

6 On the other hand, overlying industrial and commercial  
7 users do not find the cost of water to be as critical a factor.  
8 Accordingly, the more traditional "net assessment" formula was  
9 used with rights being allocated among the twelve members of the  
10 Overlying (Non-Agricultural) Pool. In this assessment mode, over-  
11 production is replenished on the basis of an assessment for the  
12 full cost of excess water produced on an acre foot per acre foot  
13 basis.

14 In the case of the Appropriators, the Judgment developed  
15 formula whereby the total over-production by that pool is met by  
16 a gross assessment as to 15% of the cost and a net assessment as t  
17 the remaining 85% of the cost.

18 The Judgment then leaves the assessment pattern within  
19 each pool under the continuing jurisdiction provisions subject to  
20 review and modification by the Court. Thus, each category of  
21 producers retains the maximum flexibility to meet future and  
22 developing circumstances. In this regard, the Judgment specifically  
23 recognizes the impact of social-economic conditions and provides  
24 for continuing study of those factors.

25 2. Operating Safe Yield. The concept of operating Safe  
26 Yield was applied with regard to the Appropriative Pool. The net  
27 effect of the concept was to allow limited mining of water in  
28 storage in excess of Safe Yield during the early period of the

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1 Physical Solution in order to reduce the burden of assessment. As  
2 a result, provision was made for limited extractions by the Approp-  
3 priative Pool in excess of that pool's share of the Safe Yield.  
4 Offsetting that right is the fact that the Appropriative Pool takes  
5 the full burden of reductions in the Safe Yield if such reductions  
6 should occur in the future. A maximum limit of 200,000 acre feet  
7 has been placed upon the aggregate mining of water authorized under  
8 this provision of the Judgment.

9           3. Ground Water Storage Contracts. The utilization of  
10 excess ground water storage capacity has been recognized in the  
11 Judgment. The administration of activities of storing water to  
12 utilize that capacity are provided for in underground storage  
13 agreements pursuant to Watermaster regulations. This is an enormous  
14 significant aspect of the adjudication, in view of the existence of  
15 approximately 2,000,000 acre feet of unused storage capacity within  
16 the basin, the largest resource of its kind in Southern California.

17           4. In Lieu Areas. The element of water quality, hereto-  
18 fore only peripherally approached in ground water adjudication, was  
19 accommodated in the Judgment by provision for "in lieu areas."  
20 Therein producers may obtain compensation for water left in the  
21 ground in lieu of its production pursuant to adjudicated rights.  
22 Provision is made within the Judgment for "in lieu areas" to be  
23 established by action of the Court.

24           5. Facilities Equity Assessment. In the Appropriative  
25 Pool, provision has been made for implementation of a "facilities  
26 equity assessment" as an aid to a gross assessment if that was  
27 ultimately adopted by the pool. These provisions are generally  
28 patterned on the statutory solution involved in the Basin Equity



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1 Assessment provisions of the Orange County Water District Act.

2 6. Agency Contracts for Exercise of Overlying (Non-  
3 Agricultural) Rights. The overlying rights of the Non-Agricultura  
4 Pool may be well exercised ultimately by municipal systems of  
5 parties within the Appropriative Pool. Inasmuch as the overlying  
6 right by its nature is appurtenant to the land and cannot be trans-  
7 ferred, provision is made for an appropriator to enter into and  
8 approve an agency agreement to produce water for delivery to the  
9 overlying land pursuant to its overlying right.

10 7. Unallocated Safe Yield Water. It is contemplated tha  
11 over a long period of years, agricultural production may well fall  
12 substantially below the aggregate amount of the Safe Yield right  
13 allocated to the pool. That Safe Yield right will remain availabl  
14 for agricultural use, but in a given year or a series of years  
15 there may be a substantial amount of Safe Yield water which is not  
16 pumped by Overlying Agricultural Pool parties. The Judgment adopt  
17 a formula for allocating that unpumped water among the members of t  
18 Appropriative Pool by first, replacing any reductions in Safe Yiel  
19 (the full impact of which falls on the Appropriative Pool), and  
20 then to recognize the conversion of agricultural land to municipal  
21 and domestic purposes.

22 8. Use of Reclaimed Water. Reclaimed water is recognized  
23 as part of supplemental water subject to use for replenishment by  
24 Watermaster or for storage by any party.

25 9. Export. The Judgment did not limit or prohibit export  
26 of ground water production, but such export over base export  
27 quantities was made subject to a full net assessment. That is, a  
28 party producing "new" water for export must pay an assessment

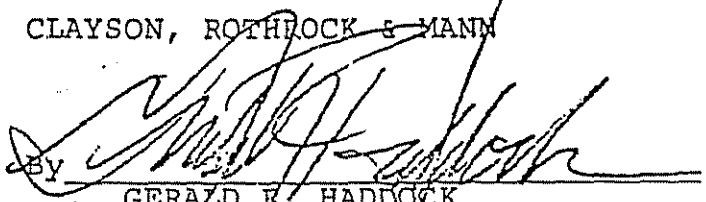
1 sufficient to buy or replerishment water to replace exported wa  
2 acre foot for acre foot.

3 10. Unlawful Pumping Practices. The Judgment does not  
4 preclude the prosecution of any cause of action which may arise  
5 with relation to the location on the extent of pumping between  
6 neighboring well owners which may constitute a wrongful interfer  
7 The subject matter of the Judgment is the determination and allo  
8 cation of rights in the gross quantity of water representing the  
9 Safe Yield of the ground water basin.

10 DATED: July 11, 1978.

11 DONALD D. STARK  
12 A Professional Corporation

13 CLAYSON, ROTHROCK & MANN

14   
15 BY \_\_\_\_\_  
16 GERALD R. HADDOCK  
17 Attorneys for Plaintiff

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# Exhibit C

**2/19/98 RULING APPOINTING  
NINE-MEMBER BOARD**

FILED - West District  
San Bernardino County Clerk

**FEB 19 1998**

Wanda DeVinney

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

**CHINO BASIN MUNICIPAL  
WATER DISTRICT,**

Plaintiff,

vs.

**CITY OF CHINO, et al.,**

Defendants.

**CASE NO. RCV 51010**

**RULING**

Introduction

This is an adjudication of groundwater rights in the Chino Basin. For at least five years before the filing of the amended complaint in July 1976, the annual production from the Chino Basin had exceeded the safe yield, resulting in a continuous state of overdraft of the basin. Concern for the future of the basin prompted the filing of the original complaint in 1975. After three years of negotiations, judgment was entered on January 27, 1978. Chino Basin Municipal Water District was appointed "Watermaster" to administer and enforce the provisions of the judgment and any subsequent order of the Court (Judgment ¶ 16.)

Chino Basin Municipal Water District has served as Watermaster for the past twenty years. A motion is presently before the court to relieve the District of its Watermaster duties and substitute in its place a nine-member board. The motion was

1 precipitated, at least in part, by the District's action calling for a special audit of certain  
2 Watermaster administrative matters. The action was taken in contravention of an  
3 asserted "mandate" by the Advisory Committee, which prompted the motion for an order  
4 declaring that the cost of the audit (\$35,000) is not a "Watermaster" expense.

5 On April 29, 1997, the court issued an Order of Special Reference to receive a  
6 report and recommendation on these two motions from Anne J. Schneider, a recognized  
7 water law expert. The court requested Special Referee Schneider to consider and give  
8 an opinion on the meaning of Paragraph 38(b) of the Judgment and its relationship to  
9 Paragraph 41 of the Judgment. The court also requested Special Referee Schneider to  
10 consider the checks and balances contained in the 1978 Judgment and the advantages  
11 or disadvantages of a public entity watermaster versus a private entity watermaster. On  
12 December 12, 1997, Special Referee Schneider issued her Report and  
13 Recommendation. The court has considered the Report and Recommendation and  
14 hereby issues its ruling accepting the Report and adopting the Recommendation of Anne  
15 Schneider. The court hereby incorporates herein by reference the entirety of Special  
16 Referee Schneider's Report and Recommendation.

17 Motion to Appoint Nine-Member Board as Watermaster

18 Unless there are compelling reasons to the contrary, upon noticed motion the  
19 court must grant a request to change the Watermaster if the motion is supported by a  
20 majority of the voting power of the Advisory Committee. (Judgment, ¶16.) In other  
21 words, to deny such a motion, the court must find reasons that "force" or "compel" denial  
22 of the motion.

23 A review of the Judgment reveals that the Watermaster's function is to administer  
24 and enforce the provisions therein and subsequent instructions or orders of the court.  
25 (*Ibid.*) The Watermaster operates on the one hand as an administrator and on the other  
26 hand as an extension of the court. When functioning as an extension of the court the  
27 Watermaster acts as a steward of the groundwater resources in the Chino Basin. The  
28 Watermaster must protect the interests of the public as well as the interests of the

1 producers. Consequently, the Watermaster may find it necessary to take positions  
2 adverse to the Advisory Committee.

3 With respect to replacing the existing Watermaster, automatic rejection of the  
4 proposed change can only be based on one of two assumptions: (1) the status quo is  
5 perfect; or (2) the choice we face is between reform and no action at all; if the proposed  
6 reform is imperfect, we presumably should take no action at all, while we wait for a  
7 perfect proposal. But the real choice is between the nine-member board and the status  
8 quo. The court finds that the status quo Watermaster is imperfect and does not in and of  
9 itself warrant finding of a compelling reason. Absent a compelling reason, the court must  
10 appoint the nine-member board as Watermaster.

11 However, if the appointment of a nine-member board would permit the Advisory  
12 Committee to control the Watermaster; and/or deprive the Watermaster of its ability to  
13 administer the Judgment independently and objectively, surely it would be a compelling  
14 reason to deny the motion. Therefore, it is significant that the proposed nine-member  
15 board would include the following:

- 16 1. Three members selected by the Overlying Pools;
- 17 2. Three members selected by the Appropriative Pool; and
- 18 3. The remaining three members would be nonpumper water districts: (a) Chino  
19 Basin Municipal Water District, (b) Western Municipal Water District, and (c)  
20 Three Valleys Municipal Water District.

21 Thus, the majority of the board members would represent the interests of producers, but  
22 the court finds the proposed nine-member board to be the best of the alternatives  
23 considered by the court, and the court, in considering compelling reasons, did consider  
24 all forms of Watermaster listed on Exhibit "A" attached hereto and herein incorporated by  
25 reference.

26 Although there is no evidence that the pecuniary interests of the board members will  
27 control their voting, to ensure that the board is carrying out the function of the  
28 Watermaster, Special Referee Schneider recommends that the appointment of the nine-

1 member board be of a limited duration to determine whether or not it will function  
2 independently from the Advisory Committee. The court agrees with the recommendation  
3 and chooses to appoint the nine-member board as Interim Watermaster, with the  
4 limitations listed in the order below.

5 At the end of the interim appointment, if it appears to the court that the proposed  
6 nine-member board is unable to function as an independent extension of the court, the  
7 court ~~will~~<sup>may</sup> appoint the Department of Water Resources as Watermaster for a five-year  
8 appointment, as provided in the Judgment. The parties are hereby informed that one of  
9 the measures that will be used by the court in determining whether or not the Nine-  
10 member Board is able to function independently is the progress made on the adoption of  
11 an optimum basin management program, which is discussed *infra*.

12 **Order Appointing Nine-Member Board as Interim Watermaster**

13 The court hereby sets aside its previous order appointing the Department of Water  
14 Resources as Interim Watermaster and instead appoints the Nine-member Board as  
15 Interim Watermaster for a twenty-six-month period commencing March 1, 1998, and  
16 ending June 30, 2000. Thus, commencing March 1, 1998, the position of Chino Basin  
17 Watermaster shall be filled by a nine-member board selected and organized as  
18 follows:

19 The Nine-member Watermaster Board shall consist of (1) two members from the  
20 Overlying (Agricultural) Pool appointed by the Overlying (Agricultural) Pool; (2) one  
21 member from the Overlying (Non- Agricultural) Pool appointed by the Overlying (Non-  
22 Agricultural) Pool; (3) three members from the Appropriative Pool appointed by the  
23 Appropriative Pool; (4) one member appointed by the Board of Three Valleys  
24 Municipal Water District; (5) one member appointed by the Board of Western  
25 Municipal Water District; and (6) one member appointed by the Board of Chino Basin  
26 Municipal Water District. The members of the Watermaster Board will vote on a one-  
27 person, one-vote basis.

28 //



1           If one of the three municipal water districts elects not to serve on the Nine-  
2 member Watermaster Board, a representative from the State of California will be  
3 seated in its place. Any member of the Appropriative Pool which owns or has a  
4 controlling interest in another member of the Appropriative Pool will not be allowed to  
5 serve concurrently with said other member of the Appropriative Pool on the  
6 Watermaster Board.

7           No individual will be allowed to serve concurrently on the Watermaster Board  
8 while serving as a member of the Advisory Committee and/or the respective Pool  
9 Committee, with the exception of representatives from the Overlying (Non-Agricultural)  
10 Pool. This shall not prevent the same member agency or entity with a representative  
11 on the Chino Basin Advisory Committee from appointing a different representative to  
12 the Watermaster Board. Additionally, participating agencies with governing bodies are  
13 strongly encouraged to have elected officials serve as their representative on the  
14 Watermaster Board.

15           Except as to members of the first Watermaster Board, Watermaster Board  
16 members shall serve staggered three-year terms. The appointments by the Municipal  
17 Water District boards, the Appropriative Pool and the Overlying (Non-Agricultural) Pool  
18 shall be made on a rotating basis with all members afforded an equal opportunity to  
19 serve. Appointments by the Overlying (Agricultural) Pool shall be rotated among  
20 categories of agricultural producers with each category of producers having an equal  
21 opportunity to serve. The State of California shall be included as one of the categories  
22 of producers rotating from the Overlying (Agricultural) Pool, unless the State of  
23 California is currently serving in a vacant municipal water district position.

24           Except as otherwise provided in this paragraph, the first Nine-member  
25 Watermaster Board shall serve until June 30, 2000. Assuming the Nine-member  
26 Board in the future is appointed Watermaster for a full five-year term, then the  
27 following actions shall be performed: At least 60 days prior to June 30, 2000, the  
28 Appropriative Pool shall extend the term of one of its then current Watermaster Board

1 representatives to June 30, 2001, and shall extend the term of another of its then  
2 current Watermaster Board representatives to June 30, 2002. At least 60 days prior to  
3 June 30, 2000, the Overlying (Agricultural) Pool and the Overlying (Non-Agricultural)  
4 Pool shall jointly extend the term of one of the three then-current Watermaster Board  
5 representatives of the two pools to June 30, 2001, and shall extend the term of  
6 another of the three then-current Watermaster Board representatives of the two pools  
7 to June 30, 2002. At least 60 days prior to June 30, 2000, the three Municipal Water  
8 Districts shall jointly extend the term of one of the three then-current Watermaster  
9 Board representatives of those three districts to June 30, 2001, and shall extend the  
10 term of another of the three then-current Watermaster Board representatives of those  
11 three districts to June 30, 2002.

12 The court hereby orders the Chief of Watermaster Services to file the names  
13 of the representatives, including any alternates thereto, with the court and to serve a  
14 copy of the names of the representatives and any such alternates on the active parties  
15 by not later than March 15, 1998. The Chief of Watermaster Services is encouraged  
16 to provide the same information to the public through print and electronic media.  
17 (See discussion *infra* concerning Watermaster's use of the Internet.)

18 Should any member of the Watermaster Board resign therefrom, become  
19 ineligible to serve thereon, or lack the mental or physical capacity to serve thereon, as  
20 determined by the court, the appointing authority shall appoint a replacement member  
21 of the Watermaster Board to serve through the unexpired period of the term of the  
22 replaced member.

23 The current Watermaster, Chino Basin Municipal Water District, is hereby  
24 ordered to take all steps necessary and proper to ensure a smooth and orderly  
25 transition to the new Watermaster Board including, but not limited to, any required  
26 actions, resolutions and/or agreements which will transition all of the present  
27 Watermaster staff members from their status as Chino Basin Municipal Water District  
28 employees to their status as employees of the Watermaster while maintaining all of

1 their employment credits and benefit programs. Not later than March 15, 1998, the  
2 Chief of Watermaster Services shall file with the court a list of the names of all  
3 Watermaster employees and their respective positions.

4 The Watermaster shall notice a hearing to occur on or before October 28, 1999,  
5 to consider all parties' input as to the continuance of the nine-member board as  
6 Watermaster after June 30, 2000. To ensure that the California Department of Water  
7 Resources is in a position to assume the duties of Watermaster at the end of the interim  
8 appointment, the court directs the parties to resume negotiations with the Department  
9 related to its takeover of Watermaster operations, should the nine-member board fail to  
10 operate independently and effectively. The Interim Watermaster shall notice a hearing no  
11 later than September 30, 1999, to report on the status of negotiations. The court further  
12 orders that, without prior court approval, the Interim Watermaster shall not enter into any  
13 agreement that the Department of Water Resources will be obligated to assume, which  
14 means no contracts signed from this day forward wherein payment and/or performance  
15 of any kind whatsoever will be after June 30, 2000. The current Watermaster employees  
16 are hereby advised that if the court appoints the California Department of Water  
17 Resources as Watermaster at the end of the interim appointment, their positions will  
18 terminate on June 30, 2000, without further order of the court. Further, the Department of  
19 Water Resources will not be required to hire current Watermaster employees upon its  
20 appointment; rather, current Watermaster employees may be rehired at the discretion of  
21 the Department and on such terms as the California Department of Water Resources  
22 deems appropriate. Finally, the California Department of Water Resources should be  
23 added to the parties' mailing list to ensure that the Department receives notice of all  
24 proceedings.

25 It should be apparent that timely filing of all reports with the court and  
26 development of an optimum basin management program are of significant interest to the  
27 court in the continuation of the nine-member board as Watermaster. The court is very  
28 aware that the parties hereto desire local control of the Watermaster function, and the

1 court has no desire to transfer control from the nine-member board provided that  
2 Watermaster professionally performs its responsibilities under the judgment.<sup>1</sup>

3 Motion to Determine Audit Expense was not a Watermaster Expense

4 Special Referee Schneider found that the special audit was ordered in response  
5 to (1) substantial increases in Watermaster's annual budget expenditures, (2) allegations  
6 of fraud or theft (even though the audit itself did not address theft), and (3) recognition  
7 that the District had lost control of the Watermaster services staff. In addition, one of the  
8 purposes of the audit was to advise the District board members of the activities occurring  
9 at the Watermaster staff level. Special Referee Schneider further found that the special  
10 audit does not fit within the definition in the Judgment of a discretionary act, nor does it  
11 fall into the category of things subject to Advisory Committee recommendation or  
12 approval. The court hereby adopts the findings of Special Referee Schneider along with  
13 the recommendation that the court determine that the special audit was made in the  
14 general course of Watermaster business; therefore, it is a proper Watermaster expense.

15 Court Monitoring of Optimum Basin Management Program

16 The judgment grants to the Watermaster discretionary powers to develop an  
17 optimum basin management program for Chino Basin, which is to include both water  
18 quantity and water quality considerations. Special Referee Schneider discovered that the  
19 current Watermaster has not completed an optimum basin management program,  
20 despite Judge Turner's recommendation in 1989 that the plan be completed within two

21 //

22 //

23

24 <sup>1</sup> However, one is reminded of the passage in "The tragedy of the commons Revisited" by Beryl Crowe (1969) with  
25 reference to administrators of the commons: ". . . one writer postulated a common life cycle for all attempts to  
26 develop regulatory bodies. The life cycle is launched by an outcry so widespread and demanding that it generates  
27 enough political force to bring about establishment of a regulatory agency to insure the equitable, just, and rational  
28 distribution of the advantages among all holders of interest in the commons. This phase is followed by the symbolic  
reassurance of the offended as the agency goes into operation, developing a period of political quiescence among  
the great majority of those who hold a general but unorganized interest in the commons. Once this political  
quiescence has developed, the highly organized and specifically interested groups who wish to make incursions  
into the commons bring sufficient pressure to bear through other political processes to convert the agency to the  
protection and furthering of their interests. In the last phase even staffing of the regulating agency is accomplished  
by drawing the agency administrators from the ranks, of the regulated." Reprinted in "Managing the Commons" by  
Garrett Hardin and John Baden. W.H. Freeman, 1977.

1 years and despite the fact that the water quality in the basin has deteriorated in recent  
2 years.

3 The Chino Basin Water Resources Management Task Force issued its report in  
4 1995, which has been identified as the initial step in the development of a management  
5 plan for the basin. (Chino Basin Water Resources Management Task Force, Chino Basin  
6 Water Resources Management Study Final Summary Report (September, 1995),  
7 hereinafter "the task force report".) Special Referee Schneider recommends that as part  
8 of the court's continuing jurisdiction and obligation to oversee, control, and direct the  
9 Watermaster, the court appoint an independent person to take a look at the work that's  
10 been done on the program to date, to determine what remains to be accomplished, and  
11 to make a complete report to the court.

12 Anne J. Schneider hereby is appointed as the court's Special Referee to report  
13 and make recommendations to the court concerning the contents, implementation,  
14 effectiveness, and shortcomings of the optimum basin management plan. Further, Joe  
15 Scalmanini hereby is appointed to provide Anne J. Schneider with technical assistance  
16 as required by Ms. Schneider to provide said report and recommendations.

17 **Order Concerning Development of Optimum Basin Management Program**

18 The court hereby makes the following orders related to the development of an  
19 optimum basin management program, which encompasses the implementation plan  
20 elements identified in the task force report and at the recent hearing conducted by  
21 Special Referee Schneider.

22 On or before June 1, 1998, each party to this action desiring to do so shall  
23 submit recommendations to the Watermaster as to the scope and level of detail of the  
24 optimum basin program. On or before June 30, 1998, the Watermaster, having first  
25 provided a copy of the scope and level of detail plan to the Advisory Committee for its  
26 review and/or action, shall file with the court its written recommendation as to the  
27 scope and level of detail of the program, together with a duly noticed motion seeking  
28 court approval of said recommendation. Special Referee Schneider shall review the

1 Watermaster's recommendations for technical and legal sufficiency, using Joe  
2 Scalmanini as a consultant on technical issues, if necessary, and make a progress  
3 report to the court by July 30, 1998. Special Referee Schneider and Mr. Scalmanini  
4 are cautioned not to duplicate the work completed by the task force in making their  
5 report to the court; but instead, supplement and modify the previous work where  
6 appropriate. Hopefully, the aforementioned procedure will enhance and elucidate  
7 work already performed, and, at the same time, save money.

8 The court further orders the Watermaster to develop an optimum basin  
9 management program, which encompasses the elements of the implementation  
10 program recommended by the task force and the implementation elements discussed  
11 at the recent hearing conducted by Special Referee Schneider. The Watermaster, in  
12 consultation with Special Referee Schneider, is to make quarterly progress reports to  
13 the court. The Special Referee is authorized to conduct hearings, if necessary, to  
14 ensure the development of all essential elements of the program. The Watermaster is  
15 to submit the optimum basin management program first to the Advisory Committee for  
16 review and/or action, then to the court no later than September 30, 1999, or show  
17 cause why it cannot do so. Thereafter, the court will hold a hearing on October 28,  
18 1999, at 1:30 p.m. to consider whether to approve and order full implementation of the  
19 program or consider why the program has not been completed.

20 Finally, in order to facilitate greater communication with the public, in addition to  
21 notices required in newspapers of general circulation, Watermaster shall have installed  
22 and maintained a so-called "web site" or such new Internet technologies as may be  
23 equal to or better than the World Wide Web, similar to those established by the Main  
24 San Gabriel Basin Watermaster and the Mojave Basin Area Watermaster, and keep it  
25 up-to-date with notice of meetings, agenda items, minutes of meetings, and such other  
26 items and such other information as Watermaster deems appropriate to inform the

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1 public of Watermaster's functions.<sup>2</sup> The public has a right to know if, as previously  
2 alleged, some board members are routinely absent from meetings, and a web page  
3 with minutes of the meetings, among other things, seems an appropriate means of  
4 communication with the public in order to keep them informed on Watermaster issues.

5 Guidelines for Watermaster and Advisory Committee

6 To provide guidance to the parties, Special Referee Schneider determined it is  
7 necessary for the court to provide an outline of the roles of the Watermaster and  
8 Advisory Committee. As noted in the Special Referee's Report and Recommendation,  
9 routine administrative functions of the Watermaster are performed independently, without  
10 review by the Advisory Committee. The Watermaster may acquire facilities and  
11 equipment (subject to certain limitations delineated in the Judgment<sup>3</sup>), may employ  
12 administrative, engineering, legal or other specialized personnel and consultants as it  
13 deems appropriate, may borrow money, and may enter into contracts for the  
14 performance of any powers granted in the Judgment. On the other hand, many  
15 Watermaster actions are subject to the approval of the Advisory Committee. For  
16 example, the Watermaster's annual budget is subject to Advisory Committee approval,  
17 the Watermaster's rules and regulations may only be adopted upon recommendation by  
18 the Advisory Committee, and the Watermaster may act jointly or in cooperation with State  
19 or Federal agencies to carry out the physical solution only upon recommendation or  
20 approval of the Advisory Committee. For further guidance as to the respective roles of  
21 the Watermaster and the Advisory Committee, the parties are directed to Part III of  
22 Special Referee Schneider's Report and Recommendation entitled "Watermaster Roles  
23 and Review of Watermaster Actions", found on pages 10 through 22, which is hereby

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26 <sup>2</sup> Initial installation of a web site cost one local attorney less than five hundred dollars, and maintenance or training  
27 of employees for updates costs approximately thirty-five dollars per hour. It would have been inappropriate for the  
28 court to have contacted any water agencies regarding their costs; hence, the above-listed costs are only  
informational, not limitations, but, clearly a multi-year contract is not warranted under the circumstances of the  
interim appointment discussed herein.

<sup>3</sup> Your attention is called to the special audit's findings regarding facilities and computer service contracts, among  
other things.

1 adopted and approved by the court and incorporated herein by this reference.

2 Conclusion

3 The court does not presage a future intention to replace the nine-member board  
4 with any other form of watermaster. On the contrary, if this court were not confident in  
5 the ability of the Nine-member Board Watermaster to effectuate the intent of the  
6 judgment, other conditions would have been imposed or another form of watermaster  
7 would have been appointed. At the present time, this court is of the opinion that the  
8 conditions of the appointment will insure the success and future five-year appointment  
9 of the Nine-Member Board as Watermaster. However, this court is of the opinion that  
10 some follow-up dates are necessary to vitiate the possibility of repeating the history of  
11 missed filing dates<sup>4</sup> and asserted inadequate management by Watermaster. None of  
12 us wants the past to be prologue.

13 There was a request for benefit and salary increases. The court is of the opinion  
14 that the Nine-member Board Watermaster should examine these requests in its initial  
15 thorough review of the entire Watermaster budget. The court is not opposed to wage  
16 and benefit increases if the Nine-member Watermaster Board deems an increase in  
17 either or both of these categories appropriate, assuming Watermaster first sends its  
18 proposed budget to the Advisory Committee and Advisory Committee has no  
19 objection. Additionally, there was expressed some concern that the employees were  
20 worried about their future employment. As you may recall, at the outset of this court's  
21 handling of this case, all parties were warned not to fire employees out of spite or for  
22 tactical reasons, because the employees were real people with real families to feed,  
23 although the employees could be terminated for legitimate reasons. Additionally,  
24 without voicing it, the court was of the opinion that most, if not all, employees could be  
25 utilized by whatever form the Watermaster became. Some may have misconstrued  
26 this as permanent judicial protection of employees beyond what law and decency  
27 //

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<sup>4</sup> There was a nunc pro tunc order necessary to confirm the activities of Watermaster after its previous appointment expired, and yearly reports have been tardy.



1 require. This was not, nor is it the court's intention.<sup>5</sup> The court does expect  
2 Watermaster to have a social conscience, but most people have no more protection  
3 than law and decency require, and Watermaster employees should be no different.  
4 Watermaster employees should realize that their best efforts are necessary to ensure  
5 the quality and quantity of water in the Chino Basin. If an employee cannot perform  
6 his or her duties, then the people dependent on the quality and quantity of water suffer,  
7 moreover, the continued existence of the Nine-member Board Watermaster is  
8 jeopardized. It should be remembered that June 30, 2000, no-Board, no-job-  
9 expectation. This is meant to be neither a flip statement nor a threat. It is meant to be  
10 fair warning; the same concern, albeit a different vein, that the court had when it  
11 conditioned the appointment of the California Department of Water Resources on  
12 negotiation by the Advisory Board and the CBMWD. At the previous hearing when  
13 asked why the negotiating parties were appointed, the attorneys were informed that  
14 there were employees to consider, and there still are employees to consider, but the  
15 employees interests have to be balanced against the greater good for all the people  
16 affected by the judgment. So far, the employee's interests have prevailed, but at the  
17 end of June 2000, the outcome could be different.

18 It should be mentioned that this court has been impressed with the  
19 professionalism displayed recently by the attorneys involved in this litigation. When  
20 this case initially came to my court, the level of vitriol was far more than was evident in  
21 a reading of the transcript of the hearing held with the Special Referee. Furthermore,  
22 although the attorneys have been very professional throughout these proceedings, it  
23 seems as though the level of vitriol at recent hearings in court has subsided to an  
24 imperceptible level, and the accelerated progress toward resolution of this case is  
25 impressive. Thank you. Also, I want to thank all of the people, Gene Koopman,  
26 among others, whose large presence, concern, and commitment did not go unnoticed  
27 or unappreciated at the hearings in this matter.

28 //

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<sup>5</sup> Although the attorneys correctly interpreted my comments to mean err, if at all, on the side of restraint during the period of litigation

1           The Special Referee alluded to "the tragedy of the commons." Assuming she  
2 meant to allude to Garrett Hardin's 1968 essay, "The Tragedy of the Commons,"<sup>6</sup> it is  
3 hoped that the appointment of the new Nine-member Board as Watermaster will result  
4 in the triumph of the commons. The people of this area deserve it. Good Luck.

5  
6 **DATED:** FEB 19 1998

J. Michael Gunn  

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**J. MICHAEL GUNN, Judge**

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28 <sup>6</sup> The article appeared in Science 162:1243-1248, December 13, 1968. The "commons" refers to the common resources that are owned or controlled by everyone or everyone in a subset having control of the common resource. The tragedy occurs when everyone has the freedom to exploit the commons, resulting in the destruction of the commons. The intent of the exploiter is irrelevant. A political solution, although problematical, is the only way to potentially save the commons, all must agree to conserve the commons.

# EXHIBIT "A"

## Adjudicated Basins and Watermasters in California

Court Name	Final Decision	Watermaster	Location
Central Basin	1965	Dept. of Water Resources -- Southern District	Los Angeles County
Chino Basin	1978	Five people, Chino Basin Municipal Water District	San Bernardino County
Cucamonga Basin	--	Not yet appointed; operated as part of Chino Basin	San Bernardino County
Cummings Basin	1972	Tehachapi-Cummings County Water District	Kern County
Main San Gabriel Basin	1973	Nine-member board nominated by water purveyors and water districts, appointed by Superior Court.	Los Angeles County
Mojave Water Agency	1996	Mojave Water Agency	San Bernardino County
Puente	1985	Three consultants	Los Angeles County
Raymond Basin	1944	Raymond Basin Management Board	Los Angeles County
San Bernardino Basin Area	1969	One representative each from Western Municipal Water District and San Bernardino Valley Municipal Water District	San Bernardino and Riverside Counties
Santa Margarita River Watershed	1966	U.S. District Court appointee	San Diego and Riverside Counties
Santa Paula Basin	1996	Three-person Technical Advisory Committee from United Water CD, City of Ventura, and Santa Paula Basin Pumpers Association	Ventura County
Scott River Stream System	1980	Two local irrigation districts	Siskiyou County
Upper Los Angeles River Area	1979	An individual hydrologist appointed by the Superior Court	Los Angeles County
Warren Valley Basin	1977	Hi-Desert Water District	San Bernardino County
West Coast Basin	1961	Dept. of Water Resources -- Southern District	Los Angeles County

Source: Calif. Dept. of Water Resources *Water Facts*, Number 3, Jan. 1996.

[http://www.agwa.org/adjud\\_basins.html](http://www.agwa.org/adjud_basins.html)

# TIMELINE

MAR. 1, 1998	MAR. 15, 1998	JUNE 1, 1998	JUNE 30, 1998	JULY 30, 1998	SEPT. 30, 1999	SEPT. 30, 1999 1:30 P.M.	OCT. 28, 1999 1:30 P.M.	JUNE 30, 2000
Interim Appointment Begins (Nine-member Board begins)	Names of Board Members and Employees filed with court	Scoping Recommendation filed with Watermaster.	Scoping Recommendation filed with court	Referee's Recommendation filed with court	OMBP filed with court	OSC Re: Status of Negotiations with Department of Water Resources.	OSC Re: Adoption and Implementation of OMBP & Continuance of Nine-member board	End of Interim Appointment (End of Nine-member Interim Water-master Board)

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2 A Professional Corporation  
3 JAMES L. MARKMAN, State Bar #43536  
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6 Brea, California 92822-1059  
7 Telephone: (714) 990-0901  
8 Fax: (714) 990-6230

FILED - West District  
San Bernardino County Clerk

FEB 24 1998

Wanda DeVinney

9 Attorneys for CHINO BASIN WATERMASTER  
10 ADVISORY COMMITTEE

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

13	CHINO BASIN MUNICIPAL WATER	)	Case No. RCV 51010
14	DISTRICT,	)	
15	Plaintiff,	)	NOTICE OF REPRESENTATIVES
16	vs.	)	APPOINTED TO NINE MEMBER
17	CITY OF CHINO,	)	WATERMASTER BOARD
18	Defendant.	)	
19		)	
20		)	
21		)	
22		)	
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29 TO: THE PARTIES HERETO AND THEIR ATTORNEYS OF RECORD:

30 PLEASE TAKE NOTICE that in accordance with the Court's  
31 ruling entered on February 19, 1998, following are the names of  
32 the representatives, including alternates, who have been appointed  
33 to serve on the Nine Member Watermaster Board commencing on  
34 March 1, 1998:

35 / / / / /  
36 / / / / /  
37 / / / / /  
38 / / / / /

1	<u>REPRESENTATIVES</u>	<u>ENTITIES</u>	<u>PERSONS</u>
2	Over-lying (Non-	CSI	Steve Arbelbide
3	Agricultural) Pool		
4	Overlying (Agricultural)	Vineyards	Paul Hofer
5	Pool		
6		Dairies	Geoffrey Vanden Heuvel
7	Appropriative Pool	Cucamonga County	Robert Neufeld
8		Water District	(Regular)
9			Jerome Wilson
10			(Alternate)
11		Monte Vista Water	Josephine Johnson
12		District	(Regular)
13			William C. Walker
14			(Alternate)
15		City of Ontario	Gus James Skropos
16			(Regular)
17	Municipal Water	Chino Basin	John L. Anderson
18	Districts	Municipal Water	(Regular)
19		District	Terry Catlin
20			(Alternate)
21		Three Valleys	A. A. Krueger
22		Municipal Water	(Regular)
23		District	
24		Western Municipal	Donald Schroeder
25		Water District	(Regular)
26			Donald Harriger
27			(Alternate)
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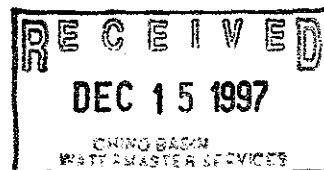
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Respectfully submitted,  
  
RICHARDS, WATSON & GERSHON,  
Attorneys for Chino Basin  
Watermaster Advisory Committee

Dated: February 23, 1996 By James L. Markman  
James L. Markman

SCHWEIDER  
RE APPT  
COURT DOCS.

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN BERNARDINO  
3 WEST DISTRICT



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6 CHINO BASIN MUNICIPAL WATER DISTRICT,)

7 Plaintiff

8 v.

9 CITY OF CHINO, et al.,

10 Defendants.  
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Case No. RCV 51010  
(Specially Assigned to the Honorable J.  
Michael Gunn)

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 BOARD



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## TABLE OF REFERENCED BRIEFS<sup>1</sup>

1. City of Ontario:  
Notice of Motion and Motion of Advisory Committee, and the City of Ontario, for the Appointment of the Honorable Don A. Turner as Interim Watermaster and to Modify Paragraph 18 of the Judgment to Provide for Compensation to the Interim Watermaster; Memorandum of Points and Authorities; Declarations of Traci Stewart, Mary Staula, Michelle Lauffer, and Robert E. Dougherty in Support Thereof (filed with Court on 3/25/97) referenced as "City of Ontario Brief"
2. Advisory Committee:  
Notice of Motion and Motion for Appointment of Nine Member Board as Watermaster; Memorandum of Points and Authorities in Support Thereof; Declaration of Traci Stewart (filed with Court on 2/3/97) referenced as "Advisory Committee Brief 1"
3. Advisory Committee:  
Notice of Motion and Motion for Order of Court that Audit Commissioned by the Chino Basin Municipal Water District Board is not a Watermaster Expense; Declaration of Traci Stewart (filed with Court on 1/28/97) referenced as "Advisory Committee Brief 2"
4. Chino Basin Municipal Water District:  
Opposition to Motion for Order of Court that Audit Commissioned by the Chino Basin Municipal Water District Board is not a Watermaster Expense; Declarations of Larry Rudder, George Borba and Bill Hill in Support Thereof (filed with Court on 2/24/97) referenced as "CBMWD Brief 1"
5. Monte Vista Water District:  
Referee's Requested Brief Regarding Identified Issues; Declaration of Langdon Wood Owen in Support of Monte Vista Water District's Brief (submitted to Special Referee on 8/18/97) referenced as "MVWD Brief 2"
6. Chino Basin Municipal Water District:  
Memorandum of Points and Authorities re: Motion to Appoint Nine Member Watermaster Board (submitted to Special Referee on 8/18/97) referenced as "CBMWD Brief 3"
7. Jurupa Community Services District:  
Jurupa Community Services District's Response to Special Referee Anne Schneider's July 18, 1997 Request for Briefs with respect to Specified Issues (submitted to Special Referee on 8/18/97) referenced as "Jurupa Brief"

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<sup>1</sup>Numerous briefs were prepared by the parties and filed with the Court or submitted to the Special Referee. Abbreviated references to these briefs are contained in the Written Report and Recommendation by the Special Referee. This index provides the complete titles of the referenced briefs.

8. Chino Basin Municipal Water District:  
Opposition to Motion for Appointment of Nine Member Board as Watermaster;  
Memorandum of Points and Authorities in Support Thereof (filed with Court on 3/4/97)  
referenced as "CBMWD Brief 2"
  
9. Monte Vista Water District:  
Memorandum of Points and Authorities of Monte Vista Water District in Partial Opposition  
to Chino Basin Watermaster's Motion for Appointment of Nine-Member Board as Watermaster;  
Declaration of P. Joseph Grindstaff (filed with Court on 3/5/97) referenced as "MVWD Brief 1"

1 I. INTRODUCTION

2 A. Scope of Reference and Restatement of Issues

3 On April 29, 1997, the Honorable J. Michael Gunn, pursuant to California Code of Civil  
4 Procedure Section 639(d), ordered a special reference for the purpose of receiving written  
5 recommendations from the appointed Special Referee, Anne J. Schneider, regarding the facts and law  
6 relative to particular matters which had been raised by the parties to the January 2, 1978<sup>1</sup> Judgment  
7 in the matter of *Chino Basin Municipal Water District v. City of Chino* (Case No. RCV 51010)  
8 (Ruling and Order of Special Reference, April 29, 1997 [hereinafter "Order of Special Reference"]).  
9 The special reference was made as a result of the following motions which remain before the Court:  
10 (1) Motion for Order That Audit Commissioned by Watermaster Is Not a Watermaster Expense; and  
11 (2) Motion to Appoint Nine-Member Watermaster Board. After reviewing the motions and  
12 opposition thereto and conducting a hearing regarding the same, the Order of Special Reference  
13 requests that the Special Referee address the following:

- 14 1. The Special Referee shall consider the Motion for Order that Audit  
15 Commissioned by Watermaster is not a Watermaster expense and make a  
16 recommendation as to how to proceed with resolving the motion. The Special  
17 Referee is specifically requested to consider and give an opinion on the  
18 meaning of Paragraph 38(b) of the Judgment and its relationship to Paragraph  
19 41 of the Judgment.
- 20 2. The Special Referee shall consider the Motion to Appoint a Nine-Member  
21 Watermaster Board and make a recommendation as to how to proceed with  
22 resolving the motion. The Special Referee is specially requested to consider  
23 the checks and balances contained in the 1978 Judgment and to consider the  
24 advantages and disadvantages of a public entity watermaster versus a private  
25 entity watermaster.

26 (Order of Special Reference at 10.)

27 The thrust of these issues is to question the roles of the Watermaster and the Advisory  
28 Committee and how those roles are related to one another. The recommendations of the Special  
29 Referee are intended to clarify each of the respective roles as well as the relationship between those  
30 roles in order to give guidance for the future as well as to respond to the immediate motions brought

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31 <sup>1</sup>The January 2, 1978 Judgment (hereinafter "Judgment") is an adjudication of groundwater  
32 and storage rights in the Chino Basin and a bound copy of the Judgment is in the current file of the  
33 Court, which has continuing jurisdiction over the Judgment.

1 before the Court.

2 **B. Report on Briefing and Hearing**

3 After receiving notice of the special reference the Special Referee conducted a conference call  
4 to ascertain recommendations from the parties as to how to proceed. It was determined that  
5 additional briefing was necessary and that a subsequent opportunity to be heard would be granted to  
6 the parties in order to fully understand the issues presented. On July 18, 1997, the Special Referee  
7 provided the parties with additional issues to be briefed and a briefing schedule. The parties  
8 presented their initial briefs on August 18, 1997, and reply briefs on September 8, 1997. On October  
9 21, 1997, a hearing was conducted at the office of the Watermaster staff, during which additional  
10 questions were raised and discussed. Counsel for certain parties and the parties themselves had an  
11 opportunity to fully discuss all issues raised during the October 21 hearing.<sup>2</sup> The original transcript  
12 from this proceeding is hereby made a part of this recommendation and lodged with the Court.<sup>3</sup>

13 **C. Urgency of Resolution**

14 It has become apparent that the resolution of the motion to appoint a nine-member  
15 Watermaster board must be resolved as expeditiously as possible. Chino Basin is suffering from both  
16 overdraft and water quality issues that continue to remain unresolved as a result of conflicts between  
17 the parties and the discrepancy of opinion with regard to the Watermaster's and the Advisory  
18 Committee's roles. The Court has recognized the urgency of the issues presented by the motion to  
19 appoint a new Watermaster (Order of Special Reference at 6) and the parties agree that the "process  
20 has ground to a halt" (TR 136:25). The urgency appears to stem from the poor condition of the basin  
21 itself, the inability of the Watermaster and the Advisory Committee to resolve essential issues, and  
22 the inability of the Watermaster to move forward in light of the interim appointment of the California  
23 Department of Water Resources (hereinafter "DWR"). Although the Court can resolve the issue with

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24  
25 <sup>2</sup>On November 10, 1997, Special Referee received the Declaration of Gerald S. Thibeault,  
26 Executive Officer of the Regional Water Quality Control Board, from counsel for Monte Vista Water  
27 District. This declaration has not been considered by the Special Referee as the matter had been  
28 submitted at the close of the October 21 hearing.

<sup>3</sup>All references to the transcript from the hearing conducted on October 21, 1997, shall be  
"TR page:line."

1 regard to the appointment of a new Watermaster, the underlying issues as to the condition of the  
2 basin and the proper roles of the Watermaster and Advisory Committee are not so easily resolved.  
3 Extensive discussion, however, between the parties and the Special Referee occurred during the  
4 October hearing regarding the respective roles of the Advisory Committee and Watermaster which  
5 will be further explicated herein and which should assist further cooperative resolution of the  
6 impending issues regarding Chino Basin management, as well as provide assistance to the Court as  
7 the ultimate "check" on the parties.

8 **D. Brief Factual Background**

9 Since issuance of the Judgment in 1978, the Chino Basin Municipal Water District (hereinafter  
10 "CBMWD") has been the Watermaster for the Chino Basin. Over the past few years it appears that  
11 the Advisory Committee has assumed the task of directing the performance of the Director of  
12 Watermaster services, currently Traci Stewart, with respect to Watermaster functions. (Order of  
13 Special Reference at 6. *See also* Advisory Committee Brief 1 at 1-2, CBMWD Brief 2 at 2, MVWD  
14 Brief 2 at 2.) Mr. Markman, spokesman for the moving parties, explained:

15 . . . the advisory committee and the watermaster entered into an agreement, as you  
16 know, the famous facilities and services agreement which essentially delegated over  
17 to the advisory committee supervision of the staff to do all this stuff. And that  
18 operated that way for a while. Then we had staff operating under direction of the  
19 advisory committee by contract, and we had a lawyer . . . in the middle trying to work  
20 with the staff directed by the advisory committee but still theoretically under the  
21 direction of Chino Basin Municipal Water District, all of which created chaos.

19 (TR at 42:19 to 43:5.)

20 In December 1996, CBMWD discovered fraudulent checks had been drawn upon the  
21 Watermaster's account. (Order of Special Reference at 2.) By that time, it appeared there was no  
22 longer any cooperation between the Advisory Committee and the Watermaster. Additional concerns  
23 were expressed regarding Watermaster expenditures which had been directed by the Advisory  
24 Committee and reluctantly processed by CBMWD as the Watermaster. (City of Ontario Brief, Decl.  
25 of T. Stewart and M. Lauffer.) Accordingly, CBMWD requested a special audit be conducted, which  
26 the Advisory Committee refused to approve.

27 The parties appear to agree that there have been no significant disputes between the  
28 Watermaster and the Advisory Committee until recently. (TR at 126:12 to 133:6.) When a dispute



1 arose as to whether a special audit should be conducted or not, the Advisory Committee was acting  
2 as the *de facto* Watermaster. Subsequently, when at CBMWD's and others' request the Watermaster  
3 staff had a special audit conducted, the Advisory Committee brought a motion as the *de facto*  
4 Watermaster seeking Court determination that the special audit was not a proper Watermaster  
5 expense. At the same time, the Advisory Committee sought a Court order changing the Watermaster.

6 One hearing participant ( Mr. Teal, City of Ontario) described the historical relationship of  
7 the Advisory Committee and Watermaster up until the issue of replacing the Watermaster arose:

8 I've been involved in this process since 1978 and beyond, and one of the things that  
9 needs to be recognized is that throughout the 18 years prior to 1996, the pools and  
10 the advisory committee essentially, on 98 percent or more of the actions, have been  
11 a hundred percent consensus. . . . And one of the reasons why we were able to reach  
12 consensus . . . was that we were very intimately involved in protecting each other's  
13 interests. . . . We were very careful in protecting everyone's interest, mainly because  
14 we all had a fear that if we didn't, then this adjudication would not work, that we  
15 would be back in court. And everybody had a fear that suddenly this Pandora's box  
16 would be opened again. And none of us wanted that because we all had something  
17 to lose. . . . What has stalled the [Optimum Basin Management Program] process, of  
18 course, is we all got hung up on who the new watermaster was going to be. Well, for  
19 18 years basically the watermaster functioned as the advisory group, and we did it  
20 through consensus building because, again, we were all afraid that the judgment  
21 wouldn't work if we didn't build a consensus.

22 (TR at 126:12 to 129:6.)

23 The parties appear to concur that the only time the Watermaster has disagreed with a  
24 recommendation of the Advisory Committee has lead to the current motion to appoint a new  
25 Watermaster. (TR at 64:4 to 67:20.) The underlying issue that triggered the current motion appears  
26 to have been the participation of the Watermaster in the question of payment for the groundwater put  
27 through a "desalter" facility.<sup>4</sup> Mr. Kidman, the spokesperson for the opposing parties, stated:

28 There was a proposal by one member of the watermaster board at that time, Chino  
Basin Municipal Water District, that said that they would support moving forward  
with that, allowing that production [of groundwater to be run through the desalter]  
to take place without assessment under the watermaster. It was that attempt at

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<sup>4</sup>It seems the motion to elect a nine-member board Watermaster stems from the Watermaster not agreeing with the Advisory Committee with regard to the special audit. The parties have indicated the initialization of the special audit triggered the filing of the motion to change the Watermaster. However, the first motion to change the Watermaster stemmed from the desalter project, as explained. That initial motion was a request to have the Advisory Committee act as the Watermaster.

1 independence that brought this whole house of cards down around all of us.  
2 (TR at 66:13-19.) Mr. Markman, spokesperson for the moving parties, concurred, stating: "I agree  
3 that frames the issue perfectly." (TR at 66:21-22.) Mr. Grindstaff, Monte Vista Water District,  
4 added further detail:

5 The entire reason we're sitting here today is because during the process of getting  
6 water for the desalter, . . . one of the members of the watermaster board came to a  
7 meeting of the ag pool and said, If we can't get water for this desalter, then I want to  
8 work with you in the ag pool, and we're going to have enough votes so it won't be  
9 a mandated action. . . That was the major issue, in fact, when the first motion was  
made to replace watermaster was that someone from watermaster had the nerve to  
actually come into the basin and say we're going to take an action or we're going to  
work with somebody to take an action that might be opposed by a majority of the  
advisory committee.

10 (TR at 64:18 to 65:7.)

11 The remarkable placidity of the Watermaster over the 18-year period from 1978 to 1996, appears in  
12 large part to be attributable to the fact that there have been extensive negotiations to achieve  
13 consensus on issues. (TR at 126:12 to 127:16.) It may also not have been clearly understood that  
14 the Watermaster can disagree with either mandatory or other recommendations of the Advisory  
15 Committee.<sup>5</sup>

16 In an attempt to resolve the continuing deadlock between the Advisory Committee and the  
17 CBMWD and to obtain additional time for the special reference, the Court appointed DWR as interim  
18 Watermaster "subject to the [DWR's] acceptance and agreement on mutually acceptable terms."  
19 (Order of Special Reference at 9.) Further, the Court ordered the Advisory Committee and CBMWD  
20 to jointly negotiate terms and conditions and present them for approval to the Court no later than  
21 June 18, 1997. (*Id.*) DWR was to act as interim Watermaster until the Court had acted upon the  
22 report of the Special Referee. The parties have not been able to come to a resolution with regard to  
23 the interim appointment of DWR. (TR at 14:4-11.) The negotiation process with DWR continues,  
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25 <sup>5</sup>It is unclear from the record how much influence legal counsel's advice had. The advice to  
26 the Watermaster from legal counsel (which has since been recused) was that the Watermaster had no  
27 recourse if the Advisory Committee acted by 80% vote. (CBMWD Brief 1, Decl. of L. Rudder ¶¶ 6  
28 and 10.) It seems legal counsel at that time specifically indicated to Watermaster services staff that  
an 80% or greater vote by the Advisory Committee was a mandate and there was no advice that such  
a mandate could be appealed to the Court pursuant to the Judgment. (*Id.*)

1 but with no certainty that it will be finalized. (TR at 17-18.) In the meantime, CBMWD continues  
2 to be recognized as an interim Watermaster (TR at 14), notwithstanding the fact that essentially all  
3 Watermaster functions currently appear to be under Advisory Committee control.

4 The Advisory Committee (as the *de facto* Watermaster), in February 1997, brought its motion  
5 to remove CBMWD as Watermaster and replace CBMWD with a nine-member Watermaster board.  
6 The Judgment provides for particular procedures in the event the Advisory Committee or another  
7 party wishes to replace the Watermaster. The procedural requirements have been met by the  
8 Advisory Committee. (Advisory Committee Brief 1.) In addition, the Advisory Committee sought  
9 an order from the Court declaring the special audit conducted by CBMWD was not a proper  
10 Watermaster expense. (Advisory Committee Brief 2.)

## 11 II. COMPELLING REASON ANALYSIS

### 12 A. The Court is Required to Make a New Watermaster Appointment Upon Motion 13 Supported by a Majority of the Advisory Committee Unless "There is a 14 Compelling Reason to the Contrary"

14 The Judgment is clear with regard to the process by which the Watermaster may be replaced.

15 The Judgment provides as follows:

16 Watermaster may be changed at any time by subsequent order of the court, on its own  
17 motion, or on the motion of any party after notice and hearing. Unless there are  
18 compelling reasons to the contrary, the court shall act in conformance with a motion  
19 requesting the Watermaster be changed if such motion is supported by a majority of  
20 the voting power of the Advisory Committee.

19 (Judgment at ¶ 16, emphasis added.) In light of the fact that all parties agree the Advisory Committee  
20 has moved the Court to replace the Watermaster with a majority vote, the inquiry is limited to  
21 whether there is "compelling reason to the contrary." During the subsequent briefing requested by  
22 the Special Referee as well as the hearing conducted in October, the parties opposed to the  
23 appointment of the nine-member board as Watermaster provided the following reasons as bases for  
24 denying the motion to appoint the nine-member board:

25 1. The purpose and objective of the Judgment overrides all other considerations (citing  
26 Judgment ¶¶ 15-17, 39-41) and the replacement nine-member board undermines the purpose and  
27 objective of the Judgment itself. The purpose and objective of the Judgment is basin management.  
28 (MVWD Brief 2 at 6.) A "producer panel" Watermaster would violate the structure of the Judgment

1 as it has always been the intention of all parties that the Watermaster be independent, neutral, and  
2 objective. (MVWD Brief 2 at 7-8 and Decl. of L. Owen.)

3 2. Appointing the basin producers as the Watermaster eliminates the “checks and  
4 balances” between Watermaster and the Advisory and Pool Committees. (MVWD Brief at 7.)

5 3. The Judgment does not contemplate a Watermaster consisting of more than one public  
6 or private entity. There would be a morass of bureaucracy if numerous entities, consisting of  
7 numerous boards of directors, had to coordinate their voting and meetings to act effectively  
8 (especially to run the day-to-day business). (MVWD Brief 2 at 8.)

9 4. The most compelling reason to deny the motion is the present condition of the  
10 groundwater of the Chino Basin. (CBMWD Brief 3 at 2, Decl. of J. Grindstaff.) The present  
11 condition of Chino Basin is “deplorable.” (*Id.*)

12 5. The purpose of vesting Watermaster with the discretionary power to develop the  
13 fundamentally important program (the Optimum Basin Management Program for Chino Basin) with  
14 only the advice of the Advisory Committee was to promote objectivity and avoid the inherent self-  
15 interest and bias of the Advisory Committee members. (Jurupa Brief at 3.) A Watermaster board  
16 controlled by northern basin interests who have unimpaired water quality compared to southern basin  
17 entities whose water quality is impaired will create self interest and bias in implementing Article X,  
18 Section 2 of the California Constitution. (Jurupa Brief at 5.)

19 6. There is evidence of a pattern of mismanagement policies and procedures for  
20 expenditures not being followed by the Watermaster, the basin being overdrawn and the quality of  
21 the water greatly diminished. (CBMWD Brief 2 at 3-4; *see also* Order of Special Reference.)

22 The term “compelling reasons” must be interpreted based upon the understanding and intent  
23 of the Court and not that of the parties. (Russell v. Superior Court (1957) 252 Cal.App.2d 1, 8.)  
24 Implied in such a requirement that “compelling reasons” be established is that the Court find reasons  
25 which “force” or “compel” the Court to deny the motion based on the ordinary and popular sense of  
26 the term.

27 ////

28 ////

1           **B.    The Most Compelling Reason Not to Appoint the Nine-Member Board as**  
2           **Watermaster Asserted by Parties Opposing the Motion is that the Advisory**  
3           **Committee Would Control the Watermaster and the Watermaster will not**  
4           **Carry Out the Separate Functions Given to it Under the Judgment**

5           Parties opposing the appointment of a nine-member Watermaster board rely heavily on the  
6           proposition that the Judgment provides for inherent “checks and balances” between the Advisory  
7           Committee and the Watermaster which would be eliminated by the appointment of the suggested  
8           nine-member Watermaster board. As stated during the hearing, the question is whether “the tyranny  
9           of the majority govern[s] under this judgment, or is it necessary that under those areas that are clearly  
10          discretionary — is it necessary to have some independent checks and balances?” (TR at 78:14-18.)  
11          The implicit question is whether appointment of the nine-member board will allow the Advisory  
12          Committee to continue to govern the Chino Basin.

13          Six members of the nine-member board would be three appropriative pool members and three  
14          overlying pool members, two from the overlying (agricultural) pool and one from the overlying  
15          (nonagricultural) pool. (TR at 87:22-25.) The other three seats are proposed for nonpumper water  
16          districts (CBMWD, Western Municipal Water District, and Three Valleys Municipal Water District).

17          The parties in opposition to the motion contend the nine-member board would not be  
18          independent and that the producer majority cannot be expected to administer the Judgment  
19          objectively, since they have financial interests in producing water as inexpensively as possible from  
20          the basin. (TR at 139:23 to 141:4.) Alternative vote-counting was suggested, however: Producers  
21          who draw water from the northern portion of the basin will have three votes on the proposed nine-  
22          member board and those three votes could well combine with the votes of the one member from the  
23          overlying (nonagricultural) pool, the one member from Three Valleys Municipal Water District, and  
24          the one member from Western Municipal Water District. Therefore, an alternative majority was also  
25          postulated which would be able to control the proposed nine-member board.<sup>6</sup> (TR 87:22 to 88:14.)

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26                 <sup>6</sup>Mr. Kidman suggested a further consideration that could affect voting patterns of the nine-  
27                 member board, one that could at some point precipitate the need for modification of the Judgment:

28                 One of the problems in the judgment . . . is that there is a strong tendency for the rich

(continued...)

1 The parties opposed to the appointment of the nine-member board do not provide direct  
2 evidence that the nine-member board will fail to be independent of the Advisory Committee.  
3 Although they assert that the nine-member board would not disagree with the Advisory Committee,  
4 that there would be “a natural tendency for the producer members of the Watermaster committee to  
5 follow the directions and the positions of those who appoint them and those who they represent” (TR  
6 at 90:12-15), it was conceded that it was conceivable that the nine-member board configuration  
7 would disagree with the Advisory Committee. (TR at 90:19-22.) In fact, it was also suggested that  
8 the inclusion of two more nonproducer public agencies (Western Municipal and Three Valleys  
9 Municipal Water Districts), along with CBMWD, will improve the current situation (TR at 85:9-17)  
10 and that these public agencies provide protections from minority views. It was also suggested that  
11 these three public agencies are in the best position to seek assistance from the Court. (TR at 86:10-  
12 17.)

13 Overall, because there is no evidence with regard to how the nine-member board would vote  
14 and whether their pecuniary interests would control their voting, there is no evidence to indicate that  
15 any “checks and balances” of the Judgment would be compromised by the nine-member board  
16 Watermaster. The parties seem to agree that the best way to ensure that the essential function of the  
17 Watermaster will be carried out was not so much dependent on who the Watermaster may be as on  
18

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19 <sup>6</sup>(...continued)

20 to get richer and the poor to get poorer. That is, representation on the advisory  
21 committee and so on gets to be established according to . . . how many water rights  
22 a party holds and to how much water a party produces or overproduces. And it's that  
23 second part especially that allows the rich to get richer and the poor to get poorer  
24 because those entities that are in a part of the basin where they can't produce because  
25 water quality is not suitable get fewer votes as a result and those that happen to be in  
26 a sweet part of the basin, where they can even overproduce their water right if they  
27 wanted to and take advantage of the underproduction of the others, get more votes.  
The system gets stacked against the parties that are in the lower-quality part of the  
basin. And appointing a watermaster panel that's composed of a majority, numerical  
majority, of producers, given the way the voting rights are stacked, is hardly a  
solution . . . that gives some people, who would like to see cleanup occur, confidence  
that it will.

28 (TR at 141:22 to 142:18.)

1 additional court oversight and guidance. Mr. Kidman, representing opposing parties, stated:

2        Could it work? Possibly. You asked that. I think so. It could work. The best way  
3        to make sure it worked is to make sure that we have an order that does outline what  
4        the really essential functions of the watermaster will be and specifically charges  
5        whoever is appointed to carry them out and establishes report-back procedures,  
6        opportunities where those that may disagree that everything is just fine have the ability  
7        to come in and . . . make sure their position is heard as to whether or not everything  
8        is going just fine.

6 (TR at 141:11-21.)

7        Finally, opposing parties did not provide an alternative at the hearing.<sup>7</sup> (TR at 139:16 to  
8        141:21.) Given the proposed composition of the nine-member board and the concerns raised by  
9        parties in opposition to the appointment, it seems prudent and necessary to provide a gauge upon  
10       which this Court can determine whether the nine-member board is properly carrying out its  
11       Watermaster roles in the event the Court grants the motion.

### 12 **III. WATERMASTER ROLES AND REVIEW OF WATERMASTER ACTIONS**

#### 13 **A. Introduction**

14        There are four general categories of Watermaster actions identified in the Judgment: There  
15       are Watermaster functions to administer the Physical Solution and to serve the Court in that regard;  
16       there is one action under Paragraph 41 explicitly identified as “discretionary”; there are numerous  
17       actions which the Watermaster is directed to take upon recommendation or advice of the Advisory  
18       Committee or with Advisory Committee approval; and there are all other actions which do not fall  
19       within one of these three categories. These categories are important for purposes of determining  
20       which processes provided in the Judgment for review of Watermaster actions apply to a particular  
21       action. There are two Court review processes available: Paragraph 31 provides for review by the  
22       Court of all Watermaster actions, decisions, or rules; and Paragraph 15 provides for motions to the  
23       Court for “further or supplemental orders or directions” or to “modify, amend or amplify” the  
24       Judgment. There are also two procedural routes, discussed *infra*, that provide for Advisory

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25  
26        <sup>7</sup>There has been some suggestion in the briefing and in closing remarks during the hearing that  
27       a five-member board consisting of two members from CBMWD, one from Three Valleys Municipal  
28       Water District, one from Western Municipal Water District, and one from some other entity such as  
DWR should be considered. (TR at 144:18-23.) This suggestion is incomplete and would require  
additional consideration by the parties which may further delay appointment of a new Watermaster.

1 Committee review and can lead to Court review: the Paragraph 38(b), 38(b)[2], 38(c) process; and  
2 the 38(b)[1], 38(c) process.

3 By analyzing the Judgment in terms of these categories of Watermaster action and avenues  
4 of review, it is possible to assess how appropriately to handle issues not explicitly covered by the  
5 Judgment, such as the special audit costs. In the case of the special audit, that action of the  
6 Watermaster to incur the expense is not an action to carry out the Physical Solution, does not fall  
7 within the explicit “discretionary” category, and is not covered by any provision explicitly requiring  
8 Advisory Committee recommendation or approval; therefore, it is within the “other action” category.  
9 As such, it is reviewable by the Court upon a Paragraph 31 motion, it does not fall within the purview  
10 of Paragraph 38(b), or the Subparagraph 38(b)[1] Advisory Committee mandate process, and does  
11 not require further order of the Court or any change in the Judgment such as the Paragraph 15  
12 process would provide.

13 **B. The Watermaster Has Duties and Powers to Administer and Enforce the**  
14 **Provisions of the Judgment and, Pursuant to the Judgment and Further**  
**Direction of the Court, to Administer and Implement the Physical Solution**

15 The Watermaster is appointed “to administer and enforce the provisions of this Judgment and  
16 any subsequent instructions or orders of the Court hereafter.” (Judgment at ¶ 16.) The  
17 Watermaster’s powers and duties are defined explicitly and exclusively with relationship to the Court,  
18 not the Advisory or Pool Committees:

19 **17. Powers and Duties.** Subject to the continuing supervision and control of the  
20 Court, Watermaster shall have and may exercise the express powers, and shall  
21 perform the duties, as provided in this Judgment or hereafter ordered or authorized  
by the Court in the exercise of the Court’s continuing jurisdiction.

22 This special relationship between the Court and Watermaster is most fully described in the  
23 Physical Solution provisions of the Judgment and provisions related to carrying out the Physical  
24 Solution. The Court expressly:

- 25 • Adopted an order to parties “to comply with the Physical Solution.” (Judgment at  
26 ¶ 39.)
- 27 • Appointed the Watermaster “to administer and enforce” the Judgment. (Judgment at  
28 ¶ 60.)



1 Under the Judgment, the Watermaster's duties and powers that are subject to the Court's  
2 continuing jurisdiction (Judgment at ¶ 17) are extensive:

- 3 • The Watermaster can seek Court review by motion requesting the Court under its  
4 continuing jurisdiction to "... make such further or supplemental orders or directions  
5 as may be necessary or appropriate for interpretation, enforcement or carrying out of  
6 this Judgment, and to modify, amend or amplify any of the provisions of this  
7 Judgment." (Judgment at ¶ 15.)
- 8 • Subject to that continuing supervision and control of the Court, "... Watermaster  
9 shall have and may exercise the express powers, and shall perform the duties, as  
10 provided in this Judgment or hereafter ordered or authorized by the Court in the  
11 exercise of the Court's continuing jurisdiction." (Judgment at ¶ 17.)
- 12 • The Watermaster is to be assisted in performing its functions under the Judgment by  
13 pool Committees, representing the pools created under the Physical Solution, and the  
14 Advisory Committee. (Judgment at ¶ 32.)
- 15 • The purpose of the Physical Solution provisions "... is to establish a legal and  
16 practical means for making the maximum reasonable beneficial use of the waters of  
17 Chino Basin by providing the optimum economic, long-term, conjunctive utilization  
18 of surface waters, ground waters and supplemental water, to meet the requirements  
19 of water users having rights in or dependent upon Chino Basin." (Judgment at ¶ 39.)  
20 Maximizing the beneficial use of Chino Basin waters makes it "essential that this  
21 Physical Solution provide maximum flexibility and adaptability in order that  
22 Watermaster and the Court may be free to use existing and future technological,  
23 social, institutional and economic options..." (Judgment at ¶ 40.)
- 24 • Groundwater "... reservoir capacity utilization for storage and conjunctive use of  
25 supplemental water [must] be undertaken only under Watermaster control and  
26 regulation, in order to protect the integrity of both such Stored Water and Basin  
27 Water in storage and the Safe Yield of Chino Basin." (Judgment at ¶ 11.)<sup>8</sup>
- 28 • With Advisory and Pool Committee advice and assistance, the Watermaster is to  
establish the procedures and administer the withdrawal and supplemental water  
replenishment of basin water as required to accomplish "full utilization of the water

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21 <sup>8</sup>The Judgment enjoins storage or withdrawal of stored water "except pursuant to the terms  
22 of a written agreement with Watermaster and [that] is [in] accordance with Watermaster regulations."  
23 (Judgment ¶ 14.) The Court must first approve, by written order, the Watermaster's execution of  
24 "Ground Water Storage Agreements." (Judgment ¶ 28.) The Advisory Committee's role is limited  
25 to giving its approval before the Watermaster can adopt "uniformly applicable rules and a standard  
26 form of agreement for storage of supplemental water." (*Id.*) However, groundwater storage rules  
27 and the standard form of agreement must be "uniformly applicable", which intrinsically leaves to the  
28 Watermaster the decision to execute agreements and, ultimately, to the Court (and notably not the  
Advisory Committee) the authority to approve those agreements. The Judgment's injunction against  
unauthorized production (Judgment ¶ 13) and injunction against unauthorized storage or withdrawal  
of stored water (Judgment ¶ 14) are integral parts of the Judgment's Physical Solution, and the  
requirement for direct Court approval of Watermaster storage agreements is another manifestation  
of the Watermaster's and Court's special relationship.

1 resources of Chino Basin," which encompasses preservation of both the water  
2 quantity and quality of basin resources. (Judgment at ¶ 41.)

- 3 • Watermaster is required to undertake socioeconomic impact studies of the assessment  
4 formula (set forth in Exhibit H to the Judgment) and its possible modification for the  
5 appropriator pool no later than ten years from the "effective date of this Physical  
6 Solution." (Judgment at Exhibit H, ¶ 8.)<sup>9</sup>

7 Exhibit I to the Judgment, the "Engineering Appendix," sets forth the parameters the  
8 Watermaster "shall consider . . . in the process of implementing the physical solution for Chino  
9 Basin":

10 1. Basin Management Parameters. In the process of implementing the physical  
11 solution for Chino Basin, Watermaster shall consider the following parameters:

12 (a) Pumping Patterns. Chino Basin is a common supply for all persons and  
13 agencies utilizing its waters. It is an objective in management of the Basin's  
14 waters that no producer be deprived of access to said waters by reason of  
15 unreasonable pumping patterns, nor by regional or localized recharge of  
16 replenishment water, insofar as such result may be practically avoided.

17 (b) Water Quality. Maintenance and improvement of water quality is a prime  
18 consideration and function of management decisions by Watermaster.

19 (c) Economic Considerations. Financial feasibility, economic impact and the  
20 cost and optimum utilization of the Basin's resources and the physical  
21 facilities of the parties are objectives and concerns equal in importance to  
22 water quantity and quality parameters.

23 (Judgment at Exh. I, ¶ 1.)

24 The Watermaster's special relationship to the Court in carrying out the Physical Solution also  
25 was discussed at the hearing. The parties during the hearing described the Watermaster as an "arm  
26 of the Court" and as such can take matters to the Court, funded by all the producers, to address  
27 anything that may alarm the Watermaster. (TR at 40:11-21.) This role is described as being separate  
28 from the ministerial or day-to-day activities of the Watermaster. (TR at 75:1-15.) This role is further  
described as one of a public advocate, to ensure independent review of what is occurring in the basin.  
(TR at 81:10-15.) When asked whether the role of the Watermaster was to be a "steward of a basin  
resource including water quality," the response was "yes", including that the Watermaster should

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<sup>9</sup>We do not have information on whether this Watermaster task has been accomplished, but  
the 15 percent/85 percent assessment formula appears not to have been changed. (TR at 29:22-25.)

1 ensure that there is not a waste or unreasonable use of basin water. (TR at 83-84.) Accordingly, the  
2 parties agree that the Watermaster is a steward of Chino Basin groundwater resources and this role  
3 may involve taking positions adverse to the Advisory Committee. (See TR at 110-111.)

4 **C. Only One Watermaster Function Is Explicitly Identified as “Discretionary,” to**  
5 **“Develop an Optimum Basin Management Program” for the Chino Basin**

6 Although there is reference in Subparagraph 38(b)[2] to “any discretionary action” of  
7 Watermaster, there in fact is only one area in which the Watermaster is explicitly granted  
8 “discretionary powers” under the Judgment, and that is to develop an Optimum Basin Management  
9 Program. (Judgment at ¶ 41.)

10 The “any discretionary action” phrase in Subparagraph 38(b)[2] implies that there are  
11 Watermaster actions in addition to development of the Optimum Basin Management Program that  
12 are also “discretionary actions.” The “any discretionary [Watermaster] action” phrase in  
13 Subparagraph 38(b)[2] appears to serve as a “catch-all” provision, intended to ensure that the  
14 Advisory Committee will have notice if the Watermaster ever proposes to take an action which has  
15 “slipped through the cracks” and is not otherwise expressly subject to Advisory Committee or Pool  
16 Committee review. Paragraph 40 raises the prospect of the Watermaster taking an action which  
17 could be described as “any discretionary action”:

18 40. Need for Flexibility. It is essential that this Physical Solution provide maximum  
19 flexibility and adaptability in order that Watermaster and the Court may be free to use  
20 existing and future technological, social, institutional and economic options, in order  
21 to maximize beneficial use of the waters of Chino Basin. To that end, the Court’s  
retained jurisdiction will be utilized, where appropriate, to supplement the discretion  
herein granted to the Watermaster.

22 The Court might “supplement the [Watermaster’s] discretion” under Paragraph 40, and leave to the  
23 Watermaster the decision as to how to exercise that supplemental discretion. Any “discretionary  
24 action” the Watermaster might take in that context would be subject to the Paragraph 38(b)[2]  
25 process. Other than when the Court might supplement the Watermaster’s discretion, every  
26 conceivable Watermaster action appears to have been anticipated in the Judgment and Advisory or  
27 Pool Committee participation provided for.

28 The overall process of developing an Optimum Basin Management Program is, essentially,

1 a collaborative process that involves the Watermaster, Advisory Committee, Pool Committees, and  
2 the Court. However, since the power to develop an Optimum Basin Management Program is granted  
3 to the Watermaster with only the advice of the Advisory and Pool Committees, the Watermaster's  
4 role can fairly be described as providing impetus for that collaborative process and carrying it through  
5 to completion.

6 **D. Numerous Watermaster Functions Under the Judgment Explicitly Require  
7 Advisory Committee Approval or are Required to be Undertaken Upon  
8 Recommendation or Advice of the Advisory Committee, and Are Not Identified  
9 As "Discretionary"**

10 **1. Advisory Committee Recommendation or Advice**

11 The Watermaster can take certain actions only upon the recommendation or advice of the  
12 Advisory Committee.

- 13 • The Watermaster shall make and adopt rules and regulations upon the  
14 recommendation of the Advisory Committee. (Judgment at ¶ 18.)
- 15 • Subject to prior recommendation or approval of the Advisory Committee, the  
16 Watermaster may act jointly or cooperatively with other agencies of the United States  
17 or the State of California to carry out the Physical Solution. (Judgment at ¶ 26.)
- 18 • The Watermaster may, with the concurrence of the Advisory Committee or the  
19 affected Pool Committee and in accordance with Paragraph 54(b), conduct studies  
20 related to implementation of the management program for the Chino Basin.  
21 (Judgment at ¶ 27.)
- 22 • Watermaster shall submit an administrative budget recommendation to the Advisory  
23 Committee, who shall review and submit its recommendations back to the  
24 Watermaster, and thence a hearing shall be held to adopt the administrative budget  
25 for the year. (Judgment at ¶ 30.)
- 26 • Watermaster is to implement Pool Committee policy recommendations for  
27 administration of the particular pools. (Judgment at ¶ 38(a).)
- 28 • Watermaster must act consistent with an Advisory Committee recommendation that  
has been approved by 80 or more votes, but has the right to bring the issue before the  
Court. (Judgment at ¶¶ 38(b)[1] and 38(c).)
- As to the Optimum Basin Management Program itself, the Advisory Committee can  
"act upon all discretionary [Watermaster] determinations," as well as "study,"  
"recommend," and "review" them. (Judgment at ¶ 38(b).)
- Watermaster must give notice and conduct a meeting prior to executing an agreement  
not within the scope of an Advisory Committee recommendation. (Judgment at  
¶ 38(b)[2].)
- The "respective pooling plans" direct how the Watermaster shall levy and collect

1 annual replenishment assessments (Judgment at ¶ 45) and production assessments.  
2 (Judgment at ¶ 51.)

- 3 • The Watermaster “may accomplish replenishment of overproduction from the Basin  
4 by any reasonable method,” subject to Paragraph 19’s direction that the Watermaster  
5 not acquire real property interests or “substantial capital assets,” Paragraph 25’s  
6 limitation on the Watermaster’s authority to enter into contracts involving the Chino  
7 Basin Municipal Water District, and Paragraph 26’s provision that the Watermaster’s  
8 authority to act jointly or cooperate with other entities to “fully and economically”  
9 carry out the Physical Solution is “subject to prior recommendation or approval of the  
10 Advisory Committee.” (Judgment at ¶ 50.)
- 11 • The parties agree that one of the Watermaster’s duties is to carry out the direction of  
12 the Advisory Committee as provided in the Judgment. (TR at 109:24.)

## 9 2. Pool Committee Requirements

10 The Pool Committees also can require Watermaster implementation of their “actions and  
11 recommendations.” (Judgment at ¶ 38(a).) For most purposes, these need not be considered  
12 separately from Advisory Committee recommendations and advice, since any disputed direction from  
13 a Pool to the Watermaster would be made through the Advisory Committee. However, the Pool  
14 Committees have extensive authority as to the allocation and approval of “special project expenses”  
15 incurred in administration of the Physical Solution.<sup>10</sup> Judgment Paragraph 54 provides in part:

16 (b) Special Project Expense shall consist of special engineering or other studies,  
17 litigation expense, meter testing or other major operating expenses. Each such project  
18 shall be assigned a Task Order number and shall be separately budgeted and  
19 accounted for.

20 . . . Special Project Expense shall be allocated to a specific pool, or any portion  
21 thereof, only upon the basis of prior express assent and finding of benefit by the Pool  
22 Committee, or pursuant to written order of the Court.<sup>11</sup>

23 (Judgment at ¶ 54.) These provisions will be central in development of implementation and financing  
24 elements of the Optimum Basin Management Program.

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26 <sup>10</sup>The Watermaster is directed to allocate and assess “general Watermaster administrative  
27 expenses” to the respective pools “as based upon generally accepted cost accounting methods.”  
28 (Judgment at ¶ 54.) This Watermaster function fits within the “other action” category.

<sup>11</sup>The Paragraph 54 “pursuant to written order of the Court” language implies that the  
Watermaster could, through the Paragraph 15 motion procedure, propose a special project expense  
be undertaken and obtain Court approval for allocation of the costs of the expense.

1           **E. Many Other Watermaster Functions under the Judgment Do Not Require**  
2           **Advisory Committee Approval or Recommendation, and Are Not Identified as**  
3           **“Discretionary”**

4                   **1. Watermaster Functions in the Normal Course of Business**

5           The Judgment expressly sets forth particular functions of the Watermaster which delineate  
6           the day-to-day affairs of the Watermaster:

- 7           • Watermaster may acquire facilities and equipment other than any interest in real  
8           property or substantial capital assets. (Judgment at ¶ 19.)
- 9           • Watermaster may employ or retain administrative, engineering, geologic, accounting,  
10           legal or specialized personnel and consultants as deemed appropriate. (Judgment at  
11           ¶ 20.)
- 12           • Watermaster shall require the parties to install and maintain in good operating  
13           condition necessary measuring devices. (Judgment at ¶ 21.)
- 14           • Watermaster is to levy and collect all assessments as provided for in the pooling plans  
15           and Physical Solution. (Judgment at ¶ 22.)
- 16           • Watermaster may invest funds in investments which are authorized for public  
17           agencies. (Judgment at ¶ 23.)
- 18           • Watermaster may borrow money. (Judgment at ¶ 24.)
- 19           • Watermaster may enter into contracts (other than with CBMWD) without the prior  
20           recommendation and approval of the Advisory Committee and written order of the  
21           Court for the performance of any powers granted in the Judgment. (Judgment at  
22           ¶ 25.)
- 23           • Watermaster conducts the accounting for the stored water in Chino Basin. (Judgment  
24           at ¶ 29.)

25           In addition, Watermaster is specifically required to levy and collect assessments each year pursuant  
26           to the respective pooling plans in amounts sufficient to purchase replenishment water to replace  
27           production by any pool during the preceding year which exceeds that pool’s allocated share of safe  
28           yield or operating safe yield. (Judgment at ¶ 45.) Watermaster shall also file an annual report  
29           containing details as to operation of each of the pools and a certified audit of all assessments and  
30           expenditures and a review of Watermaster’s activities. (Judgment at ¶ 48.)

31                   **2. Watermaster Functions Related to Administering the Pool Committees**

32           The Watermaster was directed to cause producer representatives to be organized to act as  
33           Pool Committees for each of the pools created under the Physical Solution. The Pool Committees’  
34           responsibility is to develop policy recommendations for administration of the particular pools, which

1 are transmitted to the Watermaster for action. Basically:

- 2 • The Watermaster administers the three “operating pools” to carry out the  
3 “fundamental premise of the Physical Solution . . . that all water users dependent upon  
4 Chino Basin will be allowed to pump sufficient waters from the basin to meet their  
5 requirements . . . , and each pool will provide funds to enable Watermaster to replace  
6 such overproduction.” (Judgment at ¶ 42.)
- 7 • The Watermaster administers the three pools which are responsible for and must pay  
8 for the “. . . cost of replenishment water and other aspects of this Physical Solution.”  
9 (Judgment at ¶ 43.)
- 10 • The Watermaster can levy and collect annual replenishment assessments (Judgment  
11 at ¶ 45) and production assessments (Judgment at ¶ 51).

### 12 3. Watermaster Functions Related to Administering the Physical Solution

13 Watermaster functions particularly related to administering the Physical Solution include:

- 14 • The Watermaster is directed to “seek to obtain the best available quality of  
15 supplemental water at the most reasonable cost for recharge in the Basin” (Judgment  
16 at ¶ 49) and to “accomplish replenishment of overproduction from the Basin by any  
17 reasonable method . . .” (Judgment at ¶ 50).
- 18 • The Watermaster has the power to “institute proceedings for levy and collection of  
19 a Facilities Equity Assessment” upon recommendation of the Pool Committee, and  
20 the Judgment suggests that: “To the extent that the use of less expensive alternative  
21 sources of supplemental water can be maximized by the inducement of a Facilities  
22 Equity Assessment . . . it is to the long-term benefit of the entire basin that such  
23 assessment be authorized and levied by Watermaster.” (Judgment at Exh. H, ¶ 9(a).)

### 24 F. The Judgment Provides for Specific Notice and Review Processes

#### 25 1. The Paragraphs 38(b), 38(b)[2], and 38(c) Process

26 Judgment Paragraphs 38(b), 38 (b)[2], and (c) provide:

27 (b) Advisory Committee. The Advisory Committee shall have the duty to study, and  
28 the power to recommend, review and act upon all discretionary determinations made  
or to be made hereunder by Watermaster.

[2] Committee Review. In the event Watermaster proposes to take any  
discretionary action . . . notice of such intended action shall be served on the  
Advisory Committee and its members at least thirty (30) days before the  
Watermaster meeting at which such action is finally authorized.

(c) Review of Watermaster Actions. Watermaster (as to mandated action), the  
Advisory Committee or any pool committee shall be entitled to employ counsel and  
expert assistance in the event Watermaster or such pool or Advisory Committee seeks  
court review of any Watermaster action or failure to act. . .

(Judgment at ¶¶ 38(b), (b)[2], and (c).) This Advisory Committee review process by its terms covers  
only “discretionary determinations made or to be made hereunder by Watermaster”; it does not

1 necessarily cover all other actions of the Watermaster that are not identified as “discretionary  
2 determinations.” Subparagraph 38(b)[2] provides that “any discretionary action” (with two  
3 exceptions which are not relevant)<sup>12</sup> requires notice to the Advisory Committee; the Advisory  
4 Committee, upon receiving notice, would presumably directly seek Court review under Paragraph  
5 31.

## 6 2. Subparagraphs 38(b)[1] and 38(c) Process

### 7 a. Application of 38(b)[1] Process

8 Judgment Subparagraphs 38(b)[1] and 38(c) provide:

9 [1] Committee Initiative. When any recommendation or advice of the  
10 Advisory Committee is received by Watermaster, action consistent therewith  
11 may be taken by Watermaster; provided, that any recommendation approved  
12 by 80 votes or more of the Advisory Committee shall constitute a mandate for  
13 action by Watermaster consistent therewith. If Watermaster is unwilling or  
14 unable to act pursuant to recommendation or advice from Advisory  
15 Committee (other than such mandatory recommendations), Watermaster shall  
16 hold a public hearing, which shall be followed by written findings and  
17 decision. Thereafter, Watermaster may act in accordance with said decision,  
18 whether consistent with or contrary to said Advisory Committee  
19 recommendation. Such action shall be subject to review by the court, as in the  
20 case of all other Watermaster determinations.

21 (c) Review of Watermaster Actions. Watermaster (as to mandated action), the  
22 Advisory Committee or any pool committee shall be entitled to employ counsel and  
23 expert assistance in the event Watermaster or such pool or Advisory Committee seeks  
24 court review of any Watermaster action or failure to act. . .

25 The Subparagraph 38(b)[1] Advisory Committee mandate procedure applies expressly to  
26 situations in which “any recommendation or advice of the Advisory Committee is received by  
27 Watermaster.” In situations where the Advisory Committee has already given recommendations and  
28 advice, it can thus insist, or mandate, that its recommendations or advice be taken if it has 80 or more

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23 <sup>12</sup>Subparagraph 38(b)[2] requires Watermaster to give notice to the Advisory Committee of  
24 “any discretionary action, other than approval or disapproval of a Pool committee action or  
25 recommendation properly transmitted.” (Judgment at ¶ 38(b)[2], emphasis added.) It must also  
26 notify the Advisory Committee under this subparagraph if it proposes to execute any agreement not  
27 theretofore within the scope of an Advisory Committee recommendation since the Watermaster  
28 generally can “cooperate” with other agencies only upon “prior recommendation or approval of the  
Advisory Committee.” (Judgment at ¶ 26.) A Pool Committee action or recommendation that was  
“properly transmitted” would already have been noticed to the other two pools and would have had  
Advisory Committee review if “any objections” had been raised. (Judgment at ¶ 38(a).)



1 votes.<sup>13</sup>

2 **b. The Ramifications of Paragraph 38(c)**

3 The Judgment fully anticipates that the Watermaster and Advisory Committee will not agree  
4 at all times. (TR at 40:14 *et seq.*) Subparagraph 38(b)[1] makes it clear that the Watermaster may  
5 or may not decide to take action that is consistent with the recommendation or advice of the Advisory  
6 Committee. Except when an Advisory Committee recommendation is “mandatory” (i.e., is approved  
7 by 80 or more of 100 votes), a procedure is provided for the Watermaster to take independent action.  
8 (Judgment at ¶ 38(b)[1].) Even where the Advisory Committee recommendation is “mandatory”, the  
9 Judgment anticipates that the Watermaster might still disagree. In such an event, the Watermaster  
10 can “employ counsel and expert assistance” (as a Watermaster expense) (Judgment ¶ 38(c)), and “as  
11 to any mandated action” may apply to the Court for review. (Judgment ¶ 31(b).)

12 When the Watermaster brings a motion to the Court to review a “mandated action”, its legal  
13 and expert costs in seeking Court review are a “Watermaster expense to be allocated to the affected  
14 pool or pools.” (Judgment at ¶ 38(c).) The Advisory and Pool Committees enjoy the same benefit  
15 when they seek Court review of “any Watermaster’s action, decision or rule.” (*Id.*) However, when  
16 any individual party exercises its right to seek Court review, it must shoulder its own legal and expert

17  
18 <sup>13</sup>Judge Turner, in his 1989 Order, stated:

19 The Advisory Committee takes actions on all matters considered by the various pools  
20 and submits its recommendations to the Watermaster. The Advisory Committee is  
21 the policy making group for the basin. Any action approved by 80% or more of the  
22 Advisory Committee constitutes a mandate for action by the Watermaster consistent  
therewith.

23 (Statement of Decision and Order Re Motion for Review of Watermaster Actions and Decisions Filed  
24 by Cities of Chino and Norco and San Bernardino County Waterworks District No. 8 [hereinafter  
25 “Judge Turner Order”] at 3:4-9.) This statement was made in Judge Turner’s introductory remarks  
26 to his Order and thus is properly characterized as dicta. As discussed herein, the Advisory  
27 Committee, Pool Committee, and Watermaster roles in terms of policy decision is perhaps best  
28 described as collaborative. There is no question the Advisory Committee is implicitly intended to  
propose policy, but it does not have an exclusive role in that regard. Further, it is clear that the  
mandate by 80% or more votes of the Advisory Committee can be appealed to the Court by the  
Watermaster, and applies only where the Watermaster action is to be subject to recommendations or  
advice of the Advisory Committee.

1 costs. This is viewed by several parties to be a significant factor that should be weighed in  
2 considering the independence of the Watermaster. (TR at 41:9-23, 43:15-20, 75:10-16, 76:5 to 77,  
3 and 100:11-18.) They argue that the Watermaster can bring before the Court issues which may not  
4 be raised by a party (for financial or other reasons). (*Id.*)

5 Of course, the Watermaster must first agree to speak for the party by bringing a motion to  
6 the court consistent with the party's interests for this function to have value. As discussed *supra*, the  
7 Watermaster apparently has not historically played this role. Further, the Watermaster can only bring  
8 a motion on "mandated" actions (unless the Watermaster seeks review of the Judgment by way of  
9 Paragraph 15), hence a party would still have to bring its own motion on other, non-mandated  
10 Watermaster actions, unless a Pool Committee or Advisory Committee brought the matter to the  
11 Court's attention.

### 12 3. Court Review Under Paragraph 31

13 Paragraph 31 provides for review of all Watermaster actions, decisions or rules:

14 31. Review Procedures. All actions, decisions or rules of Watermaster shall be  
15 subject to review by the court on its own motion or on timely motion by any party,  
16 the Watermaster (in the case of a mandated action), the Advisory Committee, or any  
17 pool committee as follows:

18 (b) Noticed Motion. Any party, the Watermaster (as to any mandated  
19 action), the Advisory Committee or any pool committee may, by a regularly  
20 noticed motion, apply to the court for review of any Watermaster's action,  
21 decision or rule . . .

22 (Judgment at ¶¶ 31 and 31(b).) The Paragraph 31 review is not limited to whether a Watermaster  
23 action is "discretionary" or whether such action was the subject of Watermaster recommendations  
24 or advice; Paragraph 31 review could therefore be pursued whether or not a Paragraph 38(b)[1]  
25 Advisory Committee mandate were involved.

26 The Paragraph 31 review procedure would apply to "other actions" of Watermaster, such as  
27 the special audit. The costs of the special audit were properly reviewable under the Section 31  
28 procedure, although not subject to the Paragraph 38(b)[1] Advisory Committee mandate or the  
Paragraph 38(b) study, recommendation, review and action process for "discretionary"  
determinations.

### 4. Court Review Under Paragraph 15

1 An independent review process is provided by the Judgment. Paragraph 15 of the Judgment  
2 provides for continuing jurisdiction, such that full jurisdiction, power and authority are retained and  
3 reserved to the Court as to all matters except: (1) the redetermination of safe yield during the first  
4 ten years of operation of the Physical Solution, (2) the allocation of safe yield as set forth in  
5 Paragraph 44, (3) the determination of specific quantitative rights and shares of the declared safe yield  
6 or operating safe yield, and (4) the amendment or modification of Paragraphs 7(a) and (b) of Exhibit  
7 H during the first ten years of operation of the Physical Solution. As indicated in Paragraph 15:

8 Continuing jurisdiction is provided for the purpose of enabling the Court, upon  
9 application of any party, the Watermaster, the Advisory Committee or any Pool  
10 Committee, by motion and, upon at least 30 days' notice thereof, and after hearing  
11 thereon, to make such further or supplemental orders or directions as may be  
12 necessary or appropriate for interpretation, enforcement or carrying out of this  
13 Judgment, and to modify, amend or amplify any of the provisions of this Judgment.

14 (Judgment at ¶ 15.)

15 This review provision does not limit any party, the Watermaster, the Advisory Committee or  
16 a Pool Committee in seeking review of any action or failure to act. This provision allows the  
17 Watermaster, any party, a Pool Committee or the Advisory Committee to bring to the attention of  
18 the Court any contention it may have with regard to the Physical Solution or the Judgment itself as  
19 well as day-to-day affairs conducted by the Watermaster. In addition, it grants the Watermaster the  
20 right to bring to the attention of the Court any activity of the Pool Committee or Advisory Committee  
21 which it deems inappropriate.

#### 22 IV. STATUS OF THE "OPTIMUM BASIN MANAGEMENT PROGRAM"

##### 23 A. The Court Recommended in 1989 That Within Two Years of that Date the 24 Watermaster Prepare an Integrated Optimum Basin Management Program 25 Document

26 The Watermaster is granted discretionary power to develop an Optimum Basin Management  
27 Program which includes both water quantity and quality considerations (Judgment at ¶ 41), indicating  
28 that the Judgment contemplated the resolution of the continuing water quality problems in the Chino  
Basin. In 1989, three members of both the Appropriative Pool and the Advisory Committee brought  
a "Motion for Review of Watermaster Actions and Decisions," pointing out "... a great many areas  
in which they considered the activities of the Watermaster less than perfect." (Judge Turner Order

1 at 4.) Judge Turner "recommended" that the Watermaster produce the Optimum Basin Management  
2 Program within two years. (Judge Turner Order at 10; *see also* TR at 130:16-20.) Judge Turner's  
3 1989 Order states:

4 The Moving Parties contend that the Watermaster has failed to develop an adequate  
5 Optimum Basin Management Plan (OBMP). The Watermaster, on the other hand,  
6 says that it has an excellent working OBMP although it has not been reduced to a  
7 single document. . . As indicated above, there are studies under way trying to at least  
8 define the problem and work out possible solutions. The Court finds no defect in the  
9 OBMP, although the Court does recommend that within two years the OBMP be  
10 reduced to a single integrated document approved by the Advisory Committee.

11 (Judge Turner Order at pp. 8-10.)

12 Judge Turner recognized the pervasive water quality problems with regard to nitrate buildup  
13 from dairy farms and agricultural activities. (Judge Turner Order at 9.) Judge Turner also noted that  
14 the fundamental idea behind the Judgment was to guarantee sufficient water for all legitimate users  
15 and that the water be of good quality. (Judge Turner Order at 4.) Judge Turner relied on the Santa  
16 Ana River nitrate management study to provide assistance in evaluating the nitrate problem (Judge  
17 Turner Order at 5) and recognized there was no easy solution. (Judge Turner Order at 9.) Although  
18 Judge Turner ordered that the Optimum Basin Management Program be placed into one document  
19 and contemplated that the ongoing efforts regarding the nitrate problems would at least partially  
20 resolve the water quality issues raised, this has not been the case.

21 The parties have presented sufficient evidence to indicate that the water quality in the Chino  
22 Basin has dramatically worsened over the last ten years. The Chino Basin has been identified as the  
23 single area with the most critical water quality problem in the Santa Ana River watershed. (MVWD  
24 Brief 1, Decl. of J. Grindstaff ¶ 9.) According to the 1990 nitrogen-TDS study, by the year 2000,  
25 contamination was expected to have spread over much of the basin. However, the Advisory  
26 Committee has been informed that the contamination is worse than projected, and the basin has  
27 already achieved the level of contamination projected for the year 2000. (*Id.* at ¶ 16.)

28 All parties seem to agree that water quality is a central matter of dispute. (TR at 82.) The  
parties acknowledge that for completion of the Optimum Basin Management Program it is important  
to look at what has been done and what problems remain (TR at 118:9-15). There are some basic  
critical issues that need to be resolved in terms of basin cleanup, issues which are related to the

1 transition of land use from agriculture to urban uses (TR at 31:19-23), and issues related to how  
2 contamination of the lower end of the basin is impacting producers (TR at 32:1-4). There seems to  
3 be no disagreement that the key issue is how to clean up the lower part of the basin, and how to  
4 allocate the multi-million dollar cost of that cleanup. (TR at 33:7-11, 34:23 to 35:3 and 35:11-22.)  
5 As Mr. Koopman, representing the overlying (agricultural) pool noted: "Our water is going bad  
6 faster than anybody ever imagined." (TR at 146:2-3.)

7 **B. No Optimum Basin Management Program Has Been Developed, Although**  
8 **Extensive Planning Studies Have Been Undertaken and Efforts Have Been**  
9 **Made to Address Implementation Issues**

10 **1. The "Task Force Plan" Is Not the Optimum Basin Management**  
11 **Program**

12 One of the questions addressed at the hearing was whether there is an "optimum basin  
13 management program" in existence at this time. Various parties addressed that question and the  
14 answer was that there is not a single document that is the "Optimum Basin Management Plan." (TR  
15 at 1:18 to 26:18.) The "Chino Basin Water Resources Management Task Force, Chino Basin Water  
16 Resources Management Study Final Summary Report (September 1995)" ("Task Force Plan" or  
17 "Plan") was identified as a document that had been prepared as an initial step in the development of  
18 a management plan for the Chino Basin. (TR at 21:10 to 22:21.)

19 The Task Force Plan is the "culmination of a planning effort" by the Santa Ana Watershed  
20 Project Authority (SAWPA), CBMWD, Western Municipal Water District (WMWD), Metropolitan  
21 Water District of Southern California (Metropolitan) and the Chino Basin Watermaster. (Plan at 1-  
22 1.) The impetus for developing the Plan is identified as the Chino Basin Judgment, paragraph 41, and  
23 Judge Turner's Order. (Plan at pp. 1-2.) SAWPA initiated the effort in 1988, and a "Chino Basin  
24 Groundwater Management Task Force" ("Task Force") was created January 1, 1990, by "Project  
25 Agreement No. 13" between CBMWD and WMWD "as member agencies of SAWPA." Its purpose  
26 was "to formulate an operational plan for managing the overall water resources of the Chino Basin."  
27 (*Id.*) Apparently, "Project Agreement No. 13" created a 25-member Task Force made up of 21  
28 representatives of the Advisory Committee and one representative each from SAWPA, Metropolitan,  
CBMWD and WMWD, and an engineering committee of 9 members, 5 of whom were representatives

1 of the Advisory Committee. (Plan at 1-3 to 1-4.) It is not clear to what extent or whether CBMWD  
2 participated in the development of the Plan in its role as Watermaster, rather than in its role as a  
3 member of SAWPA.

4 It is clear, however, that the Task Force Plan does not itself constitute the "optimum basin  
5 management program" that the Watermaster is directed to develop by Judgment Paragraph 41. The  
6 Task Force Plan and even its transmittal letter, make it clear that the effort it reflects does not  
7 constitute the "optimum basin management program":

8 The recommended plan thus provides the Task Force with the initial direction it will  
9 need to move forward with the additional planning studies required to formulate and  
adopt a final overall basin management plan for the Chino Basin.

10 (Letter dated September 22, 1995 from Dennis Smith, Montgomery Watson, to Mr. Mark Norton,  
11 SAWPA Project Manager.) The Task Force Plan's final recommendations reflect the fact that the  
12 Plan is not the "optimum basin management program":

13 Because there are many overlapping issues, and sometimes conflicting objectives  
14 between the programs, it is recommended there be some continuing method of  
15 coordinating the various programs to ensure consistency with the direction for the  
16 preferred [plan] . . . developed under this study. This can be accomplished through  
17 the preparation of an Implementation Plan, developed under the direction of and/or  
with input from a task force or committee representing similar interests as the Chino  
Basin Water Resources Management Study Task Force. It is desirable that such an  
effort proceed relatively soon to help guide implementation of the various elements  
that are already under active planning.

18 (Plan at 6-11.)

19 The Task Force viewed the Watermaster's role as limited:

20 Some actions such as revising storage rules and regulations and expanding  
21 replenishment facilities and operations can be accomplished principally through the  
22 Watermaster. However, implementation of many of the other elements can most  
23 effectively be achieved only through a combination of voluntary cooperation and new  
24 agreements and/or institutional and financial arrangements. . . significant development  
25 work has been ongoing for a number of years (e.g. the current Chino Desalter  
Program; Chino Basin MWD's development work together with the local agencies  
toward a water reclamation program; and all of Metropolitan's efforts toward a  
Conjunctive Storage Program). Each of these efforts is expected to continue, and  
involve some of the same agencies as well as the Watermaster in different  
combinations.

26 (*Id.*)

27 There is a sense of urgency that pervades the Task Force Plan. Although not all agreed that  
28 a "tragedy of the commons" scenario is facing the Chino Basin, the Task Force Plan's forecast

1 certainly suggests exactly that prognosis:

2 . . . if projects are left to be implemented only by individual water agencies as needed  
3 to meet water supply requirements, and the full burden of costs are born by the  
4 individual purveyor, implementation will likely be postponed as long as possible,  
5 and/or other options developed where possible. An obvious example would be for  
6 a water purveyor to seek new well locations further north in the basin, and/or deepen  
7 existing wells. Such near term solutions are understandable and justified from a local  
8 agency perspective, but can have adverse long term implications to overall basin  
9 management. Moving production further north will tend to have an adverse impact  
10 on basin yield, while deepening pumping wells tends to accelerate downward  
11 migration of constituents. In either case, the beneficial impact of removing and  
12 exporting greater quantities of salt and nitrate are not realized, and long term water  
13 trends would be more adverse than projected under this study. Therefore to facilitate  
14 development of the projects included in the plans, implementation strategies should  
15 consider various institutional, legal and financial incentives, as has been done with the  
16 Chino Desalter program. . . .

10 (Plan at 6-5.)

11 The issues, according to the Task Force Plan, encompass both water quality and water  
12 quantity. The water quantity problem is discussed in considerable detail, and is characterized as “an  
13 unacceptable condition”:

14 The projected long-term declines in storage and water levels is clearly an unacceptable  
15 condition, in addition to the fact that the physical solution to maintaining water levels  
16 within the Chino Basin under the judgment is not being met.

16 (Plan at 3-8.) The projected calculated decline in storage for the 1990 to 2040 period is 1.645 million  
17 acre feet with maximum water level declines of 140 feet in the southeastern part of the basin.  
18 Modeled declines are 1.2 million acre feet. (Plan at 3-5.) The Task Force Plan calls into question  
19 the adequacies of current basin replenishment efforts. (Plan at 3-9; Judgment, ¶¶ 42, 45.) As to the  
20 future: “All four alternative plans would result in a long-term decline in storage in the basin. . . .  
21 Thus the basin would be underreplenished. . . .” (Plan at 6-1.)

22 No complete resolution of water quality problems is suggested. Instead, the Task Force Plan  
23 notes:

24 The Chino Basin has experienced on-going water quality degradation for many years.  
25 This degradation is demonstrated by increasing salinity and nitrate concentrations in  
26 pumped groundwater. This trend is expected to continue in the future.

26 (Plan at ES-3.)

27 The water quality problem is daunting:

28 It is also apparent from reviewing the water quality projections that a major

1 commitment to extraction and treatment of degraded groundwater is needed under  
2 all four plans just to maintain the overall basin quality near current levels due to the  
3 long-term continuing negative (net increase) salt and nitrogen balance resulting  
4 primarily from past and continuing agricultural land use practices.

5 (Plan at 6-5.)

## 6 **2. The Next Phase of the Task Force Plan Work, to Develop an 7 Implementation Plan, Has Not Been Pursued**

8 The Task Force Plan identifies a "Phase III" in which a "... a Final Management Plan will be  
9 selected for implementation." (Plan at 1-3.) The anticipated task to develop that final plan included  
10 developing "operating plan details," a "financial plan," as well as an "Implementation Plan." (*Id.*)  
11 The Plan states: "Phase III will be undertaken after the Task Force has reached agreement on the  
12 best management approach for the Chino Basin." (*Id.*) According to one hearing participant, Mr.  
13 Grindstaff of Monte Vista Water District:

14 It [Task Force Plan] was adopted, but it had alternatives in it, and the next stage was  
15 to actually develop a plan that we would follow. And the advisory committee voted  
16 against funding the development of an Implementation Plan.

17 (TR at 23:8-12.) Mr. Ed James, who was chief of Watermaster services at the time of the Task Force  
18 Plan, concurred:

19 "... the study was to comply with Judge Turner's request, and it looked at the ideas  
20 and we looked at water quality and various management schemes. ... The problem  
21 is, the program ended in 1994, and since then we have not implemented the next  
22 phase. And that's kind of where we are at this point.

23 (TR at 23:19 to 24:4.)

## 24 **3. Implementation Actions Have Been Identified**

25 The Task Force Plan suggested that an Implementation Plan would include both water supply  
26 and water quality elements. "Preferred plan" elements included:

- 27 • At least 5% water conservation.
- 28 • Retaining production in the southern half of the basin and/or increasing production to the maximum extent possible as agricultural pool production is reduced.
- Limit continued accumulation of local storage accounts by underproducers in order to decrease their replenishment obligation and the accumulation of storage and possibly cap local storage accounts, and provide incentives to reduce excess storage accounts that exist now.



- 1 • Expand spreading capabilities in order to meet future replenishment obligations.
- 2 • Expand reclaimed water use.
- 3 • Increase production of high nitrate and high TDS groundwater with treatment and
- 4 removal facilities (desalters).
- 5 • Consider a conjunctive storage program agreement with Metropolitan up to an
- 6 additional 300,000 acre feet in the basin.

6 (Plan at pp. 6-6 to 6-9.)

7 The Judgment includes guidance as to what should be included in an Optimum Basin  
8 Management Program. The purpose and objective of the Physical Solution is to:

9 . . . establish a legal and practical means for making the maximum reasonable  
10 beneficial use of the waters of Chino Basin by providing the optimum economic, long-  
11 term conjunctive utilization of surface waters, ground waters and supplemental  
12 water. . . .

12 (Judgment, ¶ 39.) With the flexibility to “. . . be free to use existing and future technological, social,  
13 institutional and economic options. . .” (Judgment ¶ 40), the Watermaster is directed to consider  
14 certain “basin management parameters” in implementing the Physical Solution; these “basin  
15 management parameters” are set forth in Judgment Exhibit I, the “Engineering Appendix.” Those  
16 parameters include:

- 17 • Pumping patterns should be such that “. . . no producer be deprived of access to said  
18 waters by reason of unreasonable pumping patterns, nor by regional or localized  
19 recharge of replenishment water, insofar as such result may be practically avoided.”  
20 (Judgment, Exhibit I, ¶ 1(a).)
- 21 • “Maintenance and improvement of water quality is a prime consideration and function  
22 of management decisions by Watermaster.” (Judgment Exhibit I, ¶ 1(b).)
- 23 • “Financial feasibility, economic impact and the cost and optimum utilization of the  
24 Basin’s resources and the physical facilities of the parties are objectives and concerns  
25 equal in importance to water quantity and quality parameters.” (Judgment, Exhibit  
26 I, ¶ 1(c).)

24 This is not a comprehensive list. An initial task for the new Watermaster logically would be  
25 to develop a scope of the contents of the Optimum Basin Management Program.<sup>14</sup>

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27 <sup>14</sup>Judgment Exhibit H, Paragraph 8, directs the Watermaster to undertake socioeconomic  
28 impact studies by no later than ten years from the date of the Judgment. This work has apparently  
(continued...)

1                   4.     **The Parties Stated at the Hearing That They Could Agree to a Scope of**  
2                                   **an Optimum Basin Management Program**

3             The parties at the hearing indicated (haltingly) that they could at least agree on what needs  
4 to be included in the Optimum Basin Management Program. (TR at 30:3 to 31:12.) There was also  
5 extended discussion of the varying views of the basin management planning process status, as well  
6 as the dynamic nature of the planning process itself. Mr. Teal for the City of Ontario expressed the  
7 concern that:

8             ... one of the impressions here that's been left is that somehow the basin management  
9 process is in chaos, when in fact there is some very critical issues that need to be  
10 resolved in terms of basin cleanup and the transition from agricultural to urban. And  
11 so in fact the basin hasn't really been in chaos. We consider the basin management  
12 planning process to be a dynamic process, to be an ongoing process, as we develop  
13 a better model of the basin to better identify what are the losses, how is the  
14 contamination of the lower end of the basin, how is that impacting the producers.  
15 There is very critical economic issues here that need to be recognized.

16 (TR at 31:17 to 32:5.) In Mr. Teal's view, the Task Force Plan:

17             ... was to start the process of that basin management planning so that we could  
18 identify what the problem is and we feel we've identified the contamination problem.  
19 We have a working model now. We know generally that, yes, there are losses to the  
20 basin, and we need to correct that through storage limits. And... we think we have  
21 a plan now for storage limits. We need to now develop a plan of how we are going  
22 to clean up the lower part of the basin, which is going to cost multiple millions of  
23 dollars.

24 (TR at 33:2-11; *see also* TR 127:11 to 133:6.)

25                   5.     **The Parties Indicated at the Hearing That They Would Not Oppose**  
26                                   **Independent Legal and Technical Oversight on Behalf of the Court of**  
27                                   **the Watermaster's Efforts to Scope and Produce the Optimum Basin**  
28                                   **Management Program**

29             In response to the suggestion that the Court require a process to assure that the necessary  
30 planning is indeed occurring and that the Optimum Basin Management Program will be produced  
31 within a reasonable amount of time, no matter who the Watermaster may be, Mr. Markman,  
32 representing the moving parties, stated:

33 \_\_\_\_\_  
34                   <sup>14</sup>(...continued)  
35 not been done (TR at 29:20-25) and should be considered in the scoping process.

1 I think if the referee wants to recommend to the court that as part of your package  
2 someone with a fresh look comes in and looks at the process — — where it is and  
3 what it needs to accomplish and how it can move — — as a report to the court, I  
don't think we would resist that. We're not hiding the ball. And that might be helpful  
to the new Watermaster board as well.

4 (TR at 28:21 to 29:3.) Mr. Kidman, representing the opposing parties, agreed: "A plan and a time  
5 frame both ought to be mandated." (TR at 29:5-6.)

6 **V. IN THE EXERCISE OF ITS CONTINUING JURISDICTION, THE COURT CAN**  
7 **ORDER THE WATERMASTER TO EXERCISE ITS POWER TO PREPARE A**  
8 **COMPLETE OPTIMUM BASIN MANAGEMENT PROGRAM AND TO PERFORM**  
9 **THAT DUTY PURSUANT TO A PROCESS AND IN ACCORDANCE WITH A**  
10 **SCHEDULE SET BY THE COURT**

11 The Court retained and reserved continuing jurisdiction "... for the purpose of enabling the  
12 Court, upon application of any party, the Watermaster, the Advisory Committee or any Pool  
13 Committee . . . to make such further or supplemental orders or directions as may be necessary or  
14 appropriate . . ." to interpret, enforce or carry out the Judgment or to modify, amend or amplify the  
15 Judgment provisions. (Judgment at ¶ 15.) The Court is authorized to exercise its retained jurisdiction  
16 "... where appropriate, to supplement the discretion herein granted to the Watermaster." (Judgment  
17 at ¶ 40.) Further, the Court can act on its own motion to review "all actions, decisions or rules of  
18 Watermaster." (Judgment at ¶ 31.) Paragraph 17 further describes the Watermaster's powers and  
19 duties as subject to the Court's continuing supervision and control, and directs that the Watermaster  
20 shall have the powers and duties "... as provided in this Judgment or hereafter ordered or authorized  
21 by the Court in the exercise of the Court's continuing jurisdiction." (Judgment at ¶ 17.) If the  
22 Watermaster does not act, presumably the Court has the authority under Paragraphs 17, 31 and 40  
23 to issue necessary supplemental orders directing the Watermaster to carry out the Physical Solution  
24 under the Judgment. Basically, at the time the Court appoints a new Watermaster, the Court's  
25 authority to "make such further or supplemental orders or directions as may be necessary or  
26 appropriate for interpretation . . . or carrying out of this Judgment . . ." and to "... supplement the  
27 discretion herein granted to the Watermaster . . ." encompasses clarification of the Watermaster's  
28 roles and explicit direction to the Watermaster to prepare the Optimum Basin Management Program  
within a limited period of time.

The Court's Order in this instance, however, would not remove such Watermaster activities

1 from the Advisory Committee's review. The recommended Court orders as set forth *infra*, are  
2 logically characterized as within the "discretionary powers to develop an Optimum Basin  
3 Management Program" (Judgment at ¶ 41), or as a "supplement to the discretion herein granted"  
4 (Judgment at ¶ 40). If further Order of this Court were to direct that the Watermaster should  
5 prepare the Optimum Basin Management Program without being subject to Advisory Committee  
6 review and action, the issue of modification of the Judgment would be raised. Changing the  
7 relationship of the Advisory Committee and the Watermaster with respect to the Watermaster's  
8 development of the Optimum Basin Management Program under its discretionary powers, and the  
9 Advisory Committee's power to review and act upon all discretionary determinations made by the  
10 Watermaster, would constitute a Judgment modification. As discussed *supra*, there is no motion  
11 before the Court to make such a modification, and the Court cannot modify the Judgment on its own  
12 motion. However, the recommended Order of the Court in the matter at bar does not envision a  
13 change in the structural relationship between the Watermaster and Advisory Committee, but rather  
14 a clarification of the roles of the Watermaster, and explicit direction to the Watermaster to prepare  
15 the Optimum Basin Management Program within a limited period of time.

## 16 VI. RECOMMENDATION FOR INTERIM APPOINTMENT

### 17 A. The Special Referee Recommends that the Court Appoint the Nine-Member 18 Board as Watermaster, for an Interim Period of 24 Months, Commencing 19 January 1, 1998

19 The principal motion before the Court is to appoint the nine-member board as Watermaster.  
20 Opposing parties fear that the nine-member board will be controlled by the Advisory Committee; this  
21 may occur, but this predilection is not sufficient basis for concluding that there is a compelling reason  
22 not to appoint the nine-member board as Watermaster at this time. The events leading up to the  
23 motion and the stalemate that has ensued speak loudly, however, to the need for additional Court  
24 guidance and oversight of the Watermaster and its Optimum Basin Management Program and  
25 process.

26 The court has retained jurisdiction to supplement the discretion granted to the Watermaster  
27 under the Judgment, and it is the recommendation of the Special Referee that the Court exercise its  
28 retained jurisdiction to issue the orders recommended herein. The important independent functions

1 of the Watermaster envisioned in the Judgment do not appear effectively to have been carried out by  
2 the existing Watermaster and may not be effectively carried out by the nine-member board.

3 However, it is crucial to break the current deadlock; continuing at loggerheads will not  
4 address the problems that have arisen since the Advisory Committee essentially usurped the role of  
5 the Watermaster as to day-to-day activities, nor will it further preparation of the Optimum Basin  
6 Management Program. The fact that the Watermaster has not prepared the Optimum Basin  
7 Management Program reflects systemic failure of the Judgment and its Physical Solution, and that  
8 failure must weigh heavily in the decision to appoint a new Watermaster.

9 It is the Special Referee's recommendation that the Court appoint the nine-member board as  
10 Watermaster, but only for an interim, two-year period. Further, the nine-member board should be  
11 required to prepare the Optimum Basin Management Program before the end of the interim period.  
12 The proposed requirements and schedule are intended to provide the Court with a means to gauge  
13 the success of the new Watermaster. If the nine-member board functions successfully, it will have  
14 provided the Court with an Optimum Basin Management Program before the end of the two-year  
15 period.

16 **B. The Special Referee Recommends that the Court Set Aside its Order Appointing**  
17 **DWR as Interim Watermaster, but Direct the Nine-Member Board to Provide**  
18 **a Report to the Court by June 1, 1998, on All Aspects of Appointment of DWR**  
**to Serve as Watermaster, Should it Become Necessary to Replace the Nine-**  
**Member Board with DWR after the Interim 24-Month Period**

19 If the Court agrees with the recommendation to appoint the nine-member board, the current  
20 interim appointment of DWR should be set aside. The Court's Order appointing DWR as interim  
21 Watermaster required that the Advisory Committee and Chino Basin Municipal Water District first  
22 enter into an agreement with DWR. (Order of Special Reference at p. 9.) That has not been  
23 accomplished. (TR at 14:8 to 18:25.)

24 Mr. Kidman, representing parties who oppose the motion to appoint the nine-member board,  
25 professed to speak for the "whole basin" against appointment of DWR:

26 . . . I don't think that there's anybody in the whole basin that's very interested in  
27 seeing a loss of local control or at least some measure of maintaining local control.  
28 And having a state receiver, in effect, appointed is not something that any of us are  
really looking forward to.

1 (TR at 19:7-12.) Notwithstanding that sentiment, DWR already serves as watermaster for several  
2 groundwater basins. Its appointment offers a neutral, proven option to carry out Watermaster  
3 functions in the Chino Basin. Because of the uncertainty as to whether the nine-member board will  
4 successfully fulfill the Watermaster's duties under the Judgment and exercise its powers for the  
5 benefit of the entire Chino Basin, it is prudent to have identified an available and competent  
6 replacement which could immediately be appointed, if necessary, in two years. Although a "private  
7 entity" Watermaster is not prohibited by any provision of the Judgment, identifying an acceptable  
8 private entity is problematic.

9 Further, the Judgment provides that the Court may change the Watermaster on its own motion  
10 or on the motion of any party, but, absent compelling reasons to the contrary, the Court must "act  
11 in conformance with" a motion to appoint a new Watermaster that is supported by only a "majority  
12 of the voting power of the Advisory Committee." (Judgment at ¶ 16.) If the nine-member board  
13 appointment is determined by the Court after the two years not to have been successful, the Court  
14 could on its own motion immediately appoint DWR as Watermaster. If a majority of the voting  
15 power of the Advisory Committee were to then propose an alternative appointment, it would be up  
16 to the Court to decide if continuing disruption caused by experimenting with another Advisory  
17 Committee-proposed Watermaster would constitute "compelling reason" not to act in conformity  
18 with any such further Advisory Committee proposal.

## 19 VII. RECOMMENDATION FOR COURT OVERSIGHT AND SCHEDULE

20 The Special Referee Recommends:

- 21 1. That the Court order that the parties submit recommendations to the  
22 Watermaster as to the scope and level of detail of the Optimum Basin  
23 Management Program by March 1, 1998, and that the Watermaster file a  
24 written recommendation with the Court by April 1, 1998;
- 25 2. That the Court direct the Special Referee to review the Watermaster's  
26 Optimum Basin Management Program scoping recommendations for technical  
27 and legal sufficiency, that the Special Referee use an independent technical  
28 expert as necessary, and that the Special Referee provide timely written  
assessments to the Court on the Watermaster's progress;
3. That the Court order that the Watermaster exercise its discretionary powers to  
develop the Optimum Basin Management Program which encompasses the  
Implementation Plan elements recommended by the Task Force and submit the  
Optimum Basin Management Program to the Court by no later than July 1,

1 1999, or show cause as to why it cannot do so; and

- 2 4. That the Court hold a hearing to consider whether to approve and order full  
3 implementation of the Optimum Basin Management Program or consider why  
4 the Optimum Basin Management Program has not been completed and filed  
with the Court, and that a status report shall be provided to the Court by all  
parties as to the continuance of the nine-member board as Watermaster.

5 The Advisory Committee is not envisioned by the Judgment as the “lead” in developing the  
6 Optimum Basin Management Program, but rather as an active participant with important oversight  
7 roles. The Special Referee recommendation is intended to compel the Watermaster to newly assert  
8 itself to provide the impetus needed to develop the Optimum Basin Management Program and to take  
9 the lead role as the Judgment intended. The Watermaster has not, to date, carried out that role. The  
10 Advisory Committee has, in effect, usurped that role through the Task Force Plan process.<sup>15</sup> From  
11 a practical standpoint, the Judgment can perhaps best be interpreted as anticipating that development  
12 of the Optimum Basin Management Program will largely be a collaborative process. Of course, the  
13

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14 <sup>15</sup>The Advisory Committee position implicitly is that it should prepare the Optimum Basin  
15 Management Program or the essentially equivalent Implementation Plan. The Task Force Plan  
16 recommended that:

17 . . . there be some continuing method of coordinating the various programs to ensure  
18 consistency with the direction for the Preferred Water Resources Management  
19 developed under this study. This can be accomplished through the preparation of an  
Implementation Plan. . .

20 (Plan at pp. 6-11.) The Task Force further suggests that an Implementation Plan can be “. . .  
21 developed under the direction of and/or with input from a task force or committee representing  
22 similar interests as a Task Force.” (*Id.*) Given the makeup of the Task Force, this is tantamount to  
23 suggesting that the Advisory Committee develop the Implementation Plan. The question of whether  
the Watermaster should even be the entity to develop the Optimum Basin Management Program was  
raised in the course of the hearing. Mr. Markman suggested that “an independent watermaster” might  
perform certain review functions:

24  
25 It [the Watermaster] is a cog in the process that ultimately brings these issues to the  
26 Court. We think it is useful to have a watermaster review the optimum basin  
27 management plan. And if it agrees with the minority that opposes that plan, it has two  
ways of bringing the matter up to the Court, depending on what the vote was, and  
paying for legal counsel to support that position.

28 (TR at 43:11-19.)

1 Court ultimately resolves all issues regarding the Optimum Basin Management Program and  
2 implementation of the Physical Solution generally. (Judgment at ¶ 15.)

3 As discussed herein, the provisions related to the Physical Solution define the most important  
4 aspect of the Watermaster's special relationship with the Court. Developing the Optimum Basin  
5 Management Program to guide implementation of the Physical Solution is, in turn, the most important  
6 Watermaster task in carrying out the Physical Solution for the long term.

7 The purpose of the recommended Court oversight and schedule is to provide the Court with  
8 a means to gauge the nine-member board's efforts to develop the Optimum Basin Management  
9 Program. The particular elements of the program are discussed *supra*, and include both water  
10 quantity and water quality actions. Although at the time the Judgment was entered, the full extent  
11 of the quantity and quality challenges may not have been fully appreciated, the concept was clearly  
12 set forth in the Judgment that the Watermaster would develop an Optimum Basin Management  
13 Program that would include both water quantity and quality considerations: "Both the quantity and  
14 quality of said water resources may thereby be preserved and the beneficial utilization of the Basin  
15 maximized." (Judgment at ¶ 41.) As the Judgment intended and the Task Force Plan confirmed, the  
16 full range of problems to be addressed includes every aspect of groundwater basin management,  
17 including all implementation and financing decisions.

#### 18 **VIII. RECOMMENDATION FOR PAYMENT OF COSTS OF SPECIAL AUDIT**

19 The Special Referee recommends that the Court find that the special audit is a Watermaster  
20 expense. The audit conducted by CBMWD, acting as the Watermaster, is not explicitly defined in  
21 the Judgment as a discretionary act, nor is it an action that is explicitly recognized as subject to  
22 Advisory Committee recommendation or approval. The record reflects that the special audit was  
23 conducted in response to substantial increases in annual budget expenditures, allegations of fraud or  
24 theft, and CBMWD recognition that it had lost all control over the Watermaster services staff. It also  
25 appears that the special audit was conducted to gain some understanding of what activities were then  
26 occurring at the Watermaster staff level. The recommendation of the Special Referee is that the  
27 Court find that the special audit was made in the general course of business and was a proper  
28 Watermaster expense.




1 IX. CONCLUSION

2 The Special Referee strongly urges that the Watermaster and Advisory Committee were  
3 intended to serve separate functions and that they should not be allowed to merge. The intention of  
4 the recommendations is to prevent this merger, fully recognizing the risks inherent in the nine-member  
5 board appointment. Continued Court review and supervision is imperative.

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Respectfully submitted,

  
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# Exhibit D

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

DEC 28 2018

BY *Lisette Ortega*  
LISETTE ORTEGA, DEPUTY

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

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable Stanford E. Reichert]

**[PROPOSED] ORDER GRANTING CHINO BASIN WATERMASTER MOTION FOR COURT TO: (1) RE-APPOINT NINE-MEMBER WATERMASTER BOARD FOR A FURTHER FIVE-YEAR TERM; AND (2) RECEIVE AND FILE THE 2017/18 ANNUAL REPORT OF THE GROUND-LEVEL MONITORING COMMITTEE**

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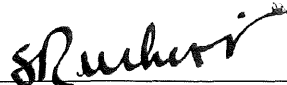
**[PROPOSED] ORDER**

On December 28, 2018, in Department S35 of the above-entitled Court, Chino Basin Watermaster's ("Watermaster") Motion for Court to: (1) Re-Appoint Nine-Member Watermaster Board for a Further Five-Year Term; (2) Approve Temporary Substitute Rate for Physical Solution Transfers Under Exhibit "G" to the Judgment; and, (3) Receive and File the 2017/18 Annual Report of the Ground-Level Monitoring Committee came on regularly for hearing in the above captioned matter. Having read and considered the papers and heard the arguments of counsel, if any, the Motion is **GRANTED**.

It is **HEREBY ORDERED** as follows:

1. The Nine-Member Watermaster Board is re-appointed for a further five-year term, expiring on February 10, 2024; and,
2. The Court hereby receives and files the 2017/18 Annual Report of the Ground-Level Monitoring Committee.

Dated: 12.28.18

  
\_\_\_\_\_  
Hon. Stanford E. Reichert  
Judge of the Superior Court  
**STANFORD E. REICHERT**

17887844

# Exhibit E



**CHINO BASIN WATERMASTER  
RULES AND REGULATIONS**

2022 Update to October 2019 version

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**ARTICLE I  
GENERAL PROVISIONS**

1.0 Title.

This document shall be known and may be referred to as the "2022 Update to the 2019 Chino Basin Watermaster Rules and Regulations" adopted pursuant to the Judgment.

1.1 Definitions.

As used in these Rules and Regulations, these terms, including any grammatical variations thereof shall have the following meanings.

- (a) "Active Parties" means all parties to the Judgment other than those who have filed a written waiver of service of notices with Watermaster, pursuant to Paragraph 58 of the Judgment. [Judgment ¶ 4(a).]
- (b) "Adjusted Physical Production" shall have the definition given in section 7.5(b)(iv).
- (c) "Agricultural Pool" shall have the meaning of Overlying (Agricultural) Pool as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(a).]
- (d) "Agricultural Pool Committee" shall mean the designated representatives and alternates who serve on behalf of the Agricultural Pool.
- (e) "Annual or Year" means a fiscal year, July 1 through June 30 following, unless the context shall clearly indicate a contrary meaning. [Judgment ¶ 4(b).]
- (f) "Annual Production Right" means the total amount of water available to the Appropriative Pool in any year from all available sources (e.g., Carry-Over Water, assigned share of Operating Safe Yield, Transfers, New Yield, water Recaptured from Storage, land-use conversions, Early Transfer) which Watermaster shall determine can be Produced by the members of the Appropriative Pool free of a Replenishment Obligation.
- (g) "Answer" means the written response that may be filed to a Complaint or the reply to a Contest pursuant to the provisions of Article X.
- (h) "Applicant" means a person that files an Application for Watermaster approval of an action pursuant to Article X.
- (i) "Application" means a request filed by any person pursuant to the provisions of Article X, seeking (i) Watermaster approval of Recharge, Transfer, Recapture or Qualifying Storage operations or activities or (ii) for Watermaster approval of a credit or reimbursement.

- (j) "Appropriative Pool" shall have the meaning as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(b).]
- (k) "Basin Water" means Groundwater within the Chino Basin which is part of the Safe Yield, Operating Safe Yield, New Yield), or Replenishment Water in the Basin as a result of operations under the Physical Solution decreed in the Judgment. Basin Water does not include "Stored Water" under the Judgment and the Peace Agreement. [Judgment ¶ 4(d).]
- (l) "Best Efforts" means reasonable diligence and reasonable efforts under the totality of the circumstances. [Peace Agreement § 1.1(d).] Note: a rule of construction applies to this definition. See section 1.2(e) below.
- (m) "CBWCD" means the Chino Basin Water Conservation District. [Peace Agreement § 1.1(e).]
- (n) "Carry-Over Right" means the annual unpumped share of Safe Yield and Operating Safe Yield that is reserved to be pumped first the following year by the members of the Non-Agricultural Pool and the Appropriative Pool respectively. [Based on the Judgment Exhibit "G" ¶ 7 and Exhibit "H" ¶ 12.]
- (o) "Carry-Over Water" means the un-Produced water in any year that may accrue to a member of the Non-Agricultural Pool or the Appropriative Pool and that is Produced first each subsequent Fiscal Year or stored as Excess Carry-Over. (Judgment Exhibit H ¶ 12.)
- (p) "CEQA" means the California Environmental Quality Act, Public Resources Code Sections 21000 et seq; 14 California Code of Regulations 15000 et seq. [Peace Agreement § 1.1(f).]
- (q) "Chino Basin" or "Basin" means the Groundwater basin underlying the area shown on Exhibit "B" to the Judgment and within the boundaries described on Exhibit "K" to the Judgment. [Judgment ¶ 4(f) and Peace Agreement § 1.1(g).]
- (r) "Chino Basin Watershed" means the surface drainage area tributary to and overlying Chino Basin. [Judgment ¶ 4(g) and Peace Agreement § 1.1(h).]
- (s) "Chino I Desalter," also known as the SAWPA Desalter, means the Desalter owned and operated by PC 14 with a present capacity of approximately eight (8) million gallons per day (mgd) and in existence on the Effective Date. [Peace Agreement § 1.1(i).]
- (t) "Chino I Desalter Expansion" means the planned expansion of the Chino I Desalter from its present capacity of approximately eight (8) mgd to a capacity of up to fourteen (14) mgd. [Peace Agreement § 1.1(j).]

- (u) "Chino II Desalter" means a new Desalter not in existence on the Effective Date with a design capacity of approximately ten (10) mgd, to be constructed and operated consistent with the OBMP and to be located on the eastside of the Chino Basin. [Peace Agreement § 1.1(k).]
- (v) "Chino North Management Zone" means the Chino North Management Zone, as it is illustrated in the 2004 Basin Plan amendment (Regional Water Quality Control Board Resolution R8-2004-0001, "Resolution Amending the Water Quality Control Plan for the Santa Ana River Basin to Incorporate an Updated Total Dissolved Solids (TDS) and Nitrogen Management Plan for the Santa Ana Region Including Revised Groundwater Subbasin Boundaries, Revised TDS and Nitrate-Nitrogen Quality Objectives for Groundwater, Revised TDS and Nitrogen Wasteload Allocations, and Revised Reach Designations, TDS and Nitrogen Objectives and Beneficial Uses for Specific Surface Waters").
- (w) "Committee(s)" means any of the Pool Committees or the Watermaster Advisory Committee as the context may compel.
- (x) "Complainant" means a party to the Judgment that files a Complaint pursuant to Article X.
- (y) "Complaint" means a claim filed by a party to the Judgment with Watermaster pursuant to the provisions of Article X.
- (z) "Contest" means an objection filed by a party to the Judgment pursuant to the provisions of Article X.
- (aa) "Contestant" means a party to the Judgment that files a Contest pursuant to the provisions of Article X.
- (bb) "Court" means the court exercising continuing jurisdiction under the Judgment. [Peace Agreement § 1.1(1).]
- (cc) "Court's Findings and Order, dated July 21, 2021" shall mean the Court's Findings and Order Re Motion Regarding Implementation of the Local Storage Limitation Solution, dated July 21, 2021.
- (dd) "Court's Findings and Order, dated March 15, 2019" shall mean the Court's Findings and Order Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule, dated March 15, 2019.
- (ee) "Date of Execution" means the first day following the approval and execution of the Peace Agreement by the last Party to do so which date is August 1, 2000. [Peace Agreement § 1.1(m).]



- (ff) "Desalter" and "Desalters" means the Chino I Desalter, Chino I Desalter Expansion, the Chino II Desalter, related facilities and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin Water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter, Desalter treatment and delivery facilities for the desalted water including pumping and storage facilities, and treatment and disposal capacity in the SARI System. [Peace Agreement § 1.1(n).]
- (gg) "Early Transfer" means the reallocation of Safe Yield in accordance with the Peace Agreement where water from the Agricultural Pool is made available to the Appropriative Pool on an annual basis. [Peace Agreement § 1.1(o).]
- (hh) "Effective Date" refers to the Effective Date of the Peace Agreement and means October 1, 2000. [Peace Agreement § 1.1(p).]
- (ii) "Excess Carry-Over Water" means Carry-Over Water which in aggregate quantities exceeds a party's share of Safe Yield in the case of the Non-Agricultural Pool, or the assigned share of Operating Safe Yield in the case of the Appropriative Pool, in any year.
- (jj) "Future Desalters" means enlargement of the Chino I Desalter to a capacity greater than the Chino I Expansion or enlargement of the Chino II Desalter and any other new Desalter facilities that may be needed to carry out the purposes of the OBMP over the term of the Peace Agreement. [Peace Agreement § 1.1(q).]
- (kk) "General law" means all applicable state and federal laws. [Peace Agreement § 1.1(r).]
- (ll) "Groundwater" means all water beneath the surface of the ground. [Judgment ¶ 4(h) and Peace Agreement § 1.1(s).]
- (mm) "Groundwater Storage Agreement" means either a Local Storage Agreement or an agreement in connection with a Storage and Recovery Program.
- (nn) "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. [Peace II Agreement § 1.1(b).]
- (oo) "Hydrologic Balance" means the maintenance of total inflow at a level generally equivalent to total outflow as measured over an appreciable period of time that is sufficient to account for periodic changes in climate and watershed, basin and land management conditions.
- (pp) "IEUA" means the Inland Empire Utilities Agency, referred to in the Judgment as Chino Basin Municipal Water District. [Peace Agreement § 1.1(t).]

- (qq) "In-lieu Recharge" means taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provided in Exhibit "H" Paragraph 11 of the Judgment. [Peace Agreement § 1.1(u).]
- (rr) "Judgment" means the Judgment dated January 27, 1978, in San Bernardino County Case No. 164327 (redesignated as San Bernardino County Case No. RCV RS51010) as restated pursuant to Order Adopting Restated Judgment, dated September 27, 2012, amended pursuant to Order Approving Amendments to Restated Judgment and Rules and Regulations Regarding Compensation of Watermaster Board Members, dated August 22, 2014, Orders for Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, dated April 28, 2017, Court's Findings and Order, dated March 15, 2019, Order Granting Motion for Court Approval of Amendments to Restated Judgment Regarding Compensation of Watermaster Pool and Advisory Committee Members, dated June 26, 2020, Orders Regarding Chino Basin Watermaster Motion Regarding 2020 Safe Yield Reset, Amendment of Restated Judgment, Paragraph 6, dated July 31, 2020, and other such amendments. [See Peace Agreement § 1.1(v).]
- (ss) "Leave Behind" means a contribution to the Basin from water held in storage within the Basin under a Storage and Recovery Agreement that may be established by Watermaster from time to time that may reflect any or all of the following: (i) actual losses; (ii) equitable considerations associated with Watermaster's management of storage agreements; and (iii) protection of the long-term health of the Basin against the cumulative impacts of simultaneous recovery of groundwater under all storage agreements. [Peace II Agreement § 1.1(c).]
- (tt) "Local Imported Water" is water from any origin, native or foreign which was not available for use or included in the calculation of Safe Yield of the Chino Basin at the time the Judgment was entered. [Based on Judgment 49(c).] Local Imported Water is reported by Watermaster in its annual report.
- (uu) "Local Storage" means water held in a storage account pursuant to a Local Storage Agreement between a party to the Judgment and Watermaster. Local Storage accounts may consist of: (i) a Producer's unproduced Excess Carry-Over Water or (ii) a party to the Judgment's Supplemental Water, up to a cumulative maximum of one hundred thousand (100,000) acre-feet for all parties to the Judgment stored in the Basin on or after July 1, 2000 or (iii) that amount of Supplemental Water previously stored in the Basin on or before July 1, 2000 and quantified in accordance with the provisions and procedures set forth in Section 7.2 of these Rules and Regulations, or (iv) that amount of water which is or may be stored in the Basin pursuant to a Storage Agreement with Watermaster which exists and has not expired before July 1, 2010. [Peace Agreement § 1.1(x).] As to that portion of the Maximum Local Storage Quantity in excess of the initial 500,000 AF Safe

Storage Capacity, Local Storage accounts may consist of Producers' Excess Carry-Over Water or parties' to the Judgment's Supplemental Water.

- (vv) "Local Storage Agreement" means a Groundwater Storage Agreement for Local Storage.
- (ww) "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer, Storage and Recovery, management, movement or Production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, 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).]
- (xx) "Maximum Local Storage Quantity" means the maximum quantity of water that may be held in Local Storage, when combined with Carry-Over Water, is 700,000 acre-feet until June 30, 2030. After June 30, 2030, the Maximum Local Storage Quantity shall be reduced to 620,000 acre-feet until June 30, 2035. [Court's Findings and Order, dated July 21, 2021.]
- (yy) "Metropolitan Water District" or "MWD" means the Metropolitan Water District of Southern California. [Peace Agreement § 1.1(z).]
- (zz) "Minimal Producer" means any producer whose Production does not exceed ten (10) acre-feet per year. [Judgment ¶ 4(j).]
- (aaa) "New Yield" means proven increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of rising water, capture of available storm flow, operation of the Desalters and related facilities, induced Recharge and other management activities implemented and operational after June 1, 2000. [Peace Agreement § 1.1(aa).]
- (bbb) "Non-Agricultural Pool" shall have the meaning as used in the Judgment for the Overlying (Non-Agricultural) Pool and shall include all its members. [Peace Agreement § 1.1(bb).]
- (ccc) "OBMP" means the Optimum Basin Management Program, which consists of the OBMP Phase I Report and the OBMP Implementation Plan, which shall be implemented consistent with the provisions of Article V of the Peace Agreement. [July 13, 2000 Court Order.]
- (ddd) "OBMP Assessments" means assessments levied by Watermaster for the purpose of implementing the OBMP. [Peace Agreement § 1.1(cc).] Note: a rule of construction applies to this definition. See section 1.2(f) below.

- (eee) "OBMP Implementation Plan" means Exhibit "B" to the Peace Agreement, as supplemented by the 2007 Supplement thereto.
- (fff) "OCWD" means the Orange County Water District. [Peace Agreement § 1.1(dd).]
- (ggg) "Operating Safe Yield" means the annual amount of Groundwater which Watermaster shall determine, pursuant to criteria specified in Exhibit "I" to the Judgment, can be Produced from Chino Basin by the Appropriative Pool parties free of Replenishment obligation under the Physical Solution. [Judgment ¶ 4(1) and Peace Agreement § 1.1(ee).]
- (hhh) "Overdraft" means a condition wherein the total annual Production from the Basin exceeds the Safe Yield thereof, as provided in the Judgment. [Judgment ¶ 4(m) and Peace Agreement § 1.1(ff).]
- (iii) "Overlying Right" means the appurtenant right of an owner of lands overlying Chino Basin to Produce water from the Basin for overlying beneficial use on such lands. [Judgment ¶ 4(n).]
- (jjj) "PC 14" means Project Committee No. 14, members of SAWPA, composed of IEUA, WMWD, and OCWD, pursuant to Section 18 of the SAWPA Joint Exercise of Powers Agreement which now constitutes the executive Authority through which SAWPA acts with respect to the Chino I Desalter and other facilities, programs and projects. [Peace Agreement § 1.1(ll).]
- (kkk) "Party" or "Parties" means a Party to the Peace Agreement or Peace II Agreement. [Peace Agreement § 1.1(gg); Peace II Agreement § 1.1(e).]
- (lll) "Party" or "parties to the Judgment" means a party to the Judgment. [Peace Agreement § 1.1(hh).]
- (mmm) "Peace Agreement" means the agreement dated June 29, 2000 among various parties to the Judgment identified therein and approved by Watermaster, as amended by the First Amendment to Peace Agreement dated September 2, 2004, the Second Amendment to Peace Agreement, dated September 21, 2007, and as shown in Attachment A to the Court's Findings and Order, dated March 15, 2019.
- (nnn) "Peace II Agreement" means the agreement dated September 21, 2007 among various parties to the Judgment identified therein and approved by Watermaster, as amended as shown in Attachment A to the Court's Findings and Order, dated March 15, 2019.
- (ooo) "Person" means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature including

but not limited to the State of California and the Department of Water Resources. [Judgment ¶ 4(o).]

- (ppp) "Physical Solution" shall have the meaning of the Physical Solution as described in the Judgment.
- (qqq) "Produce" or "Produced" means to pump or extract groundwater from the Chino Basin. [Judgment 4(q) and Peace Agreement § 1.1(ii).]
- (rrr) "Producer" means any person who Produces water from the Chino Basin. [Judgment ¶ 4(r) and Peace Agreement § 1.1(jj).]
- (sss) "Production" means the annual quantity, stated in acre-feet, of water Produced from the Chino Basin. [Judgment ¶ 4(s) and Peace Agreement § 1.1(kk).]
- (ttt) "Public Hearing" means a hearing of Watermaster held pursuant to the Judgment other than as provided in Article X herein.
- (uuu) "Qualifying Storage" means the storage of Supplemental Water, Excess Carry-Over Water after July 1, 2010 or to participate in a Storage and Recovery Program.
- (vvv) "Qualifying Storage Agreement" means an agreement with Watermaster to store Supplemental Water, Excess Carry-Over Water after July 1, 2010 or to store water by participation in a Storage and Recovery Program.
- (www) "Recapture" and "Recover" means the withdrawal of water stored in the Basin under a Groundwater Storage Agreement.
- (xxx) "Recharge" and "Recharge Water" means the introduction of water into the Basin, directly or indirectly, through injection, percolation, delivering water for use in-lieu of Production or other method. Recharge references the physical act of introducing water into the Basin. Recharge includes Replenishment Water but not all Recharge is Replenishment Water. [Peace Agreement § 1.1(nn).] Note: a rule of construction applies to this definition. See section 1.2(g) below.
- (yyy) "Recycled Water" means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource, referred to as "reclaimed water" in the Judgment. [Judgment ¶ 4(u) and Peace Agreement § 1.1(pp).]
- (zzz) "Re-Operation" means the controlled overdraft of the Basin by the managed withdrawal of groundwater Production for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 acre-feet authorized by paragraph 3 of the Engineering Appendix Exhibit I to the Judgment, to 600,000 acre-feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution. [Peace II Agreement § 1.1(d).] The Court-

approved schedule for access to Re-Operation water during the period of 2013-14 through 2029-30 is attached hereto as Exhibit "B."

- (aaaa) "Reset Technical Memorandum" means the memorandum attached hereto and incorporated herein as Exhibit "A," which sets forth the methodology pursuant to which the Safe Yield is evaluated or reset.
- (bbbb) "Replenishment Obligation" means the quantity of water that Watermaster must purchase to replace Production by any Pool during the preceding Fiscal Year which exceeds that Pool's allocated share of Safe Yield or Operating Safe Yield in the case of the Appropriative Pool. The quantity of a Producer's Over-Production and the Replenishment Obligation is determined after Watermaster takes into account any Transfers of water or any Recovery from storage in the same year, and takes into account the Appropriative Pool obligation as a result of the implementation of the Peace Agreement, if any. [Judgment ¶ 45.]
- (cccc) "Replenishment Water" means Supplemental Water used to Recharge the Basin pursuant to the Physical Solution, either directly by percolating the water into the Basin or indirectly by delivering the water for use in-lieu of Production and use of Safe Yield or Operating Safe Yield. [Judgment ¶ 4(v) and Peace Agreement § 1.1(oo).]
- (dddd) "Responsible Party" means the owner, co-owner, lessee or other person(s) designated by multiple parties interested in a well as the person responsible for purposes of filing reports with Watermaster pursuant to the Judgment ¶ 4(w). [Judgment, ¶ 4(w).]
- (eeee) "Rules and Regulations" means this 2022 Update to the 2019 Chino Basin Watermaster Rules and Regulations as authorized pursuant to the Judgment, adopted by the Watermaster on January 27, 2022 and as they may be amended from time to time. They are to be distinguished from the previous Watermaster Rules and Regulations that were repealed and replaced by the same action adopting and approving these Rules and Regulations.
- (ffff) "Safe Yield" means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of Replenishment or Stored Water) which can be Produced from the Basin under cultural conditions of a particular year without causing an undesirable result. [Judgment ¶ 4(x) and Peace Agreement § 1.1(qq).]
- (gggg) "SAWPA" means the Santa Ana Watershed Project Authority. [Peace Agreement § 1.1(ss).]
- (hhhh) "Sphere of Influence" has the same meaning as set forth in Government Code Section 56076.

- (iii) "Storage and Recovery Program" means the use of the available storage capacity of the Basin by any person under the direction and control of Watermaster pursuant to a Court approved Groundwater Storage Agreement but excluding "Local Storage," including the right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment. [Peace Agreement §1.1(uu).]
- (jjj) "Stored Water" means Supplemental Water held in storage, as a result of direct spreading, injection or in-lieu delivery, for subsequent withdrawal and use pursuant to a Groundwater Storage Agreement with Watermaster. [Judgment ¶ 4(aa) and Peace Agreement § 1.1(vv).]
- (kkk) "Supplemental Water" means water imported to Chino Basin from outside the Chino Basin Watershed and Recycled Water. [Judgment ¶ 4(bb) and Peace Agreement § 1.1(wv).]
- (lll) "Transfer" means the assignment (excepting an assignment by a member of the Non-Agricultural Pool or the Agricultural Overlying Pool), lease, or sale of a right to Produce water to another Producer within the Chino Basin or to another person or entity for use outside the Basin upon the person's intervention in conformance with the Judgment. [Peace Agreement § 1.1(xx).]
- (mmm) "TVMWD" means Three Valleys Municipal Water District (referred to in the Judgment as Pomona Valley Municipal Water District). [Peace Agreement § 1.1(yy).]
- (nnn) "Uniform Groundwater Rules and Regulations" (UGRR) means the Uniform Groundwater Rules and Regulations that were in effect on December 31, 2000.
- (ooo) "Watermaster" means Watermaster as the term is used in the Judgment. [Peace Agreement § 1.1 (zz).]
- (ppp) "WMWD" means Western Municipal Water District. [Judgment ¶ 4(cc) and Peace Agreement § 1.1(bbb).]

## 1.2 Rules of Construction

- (a) Unless the context clearly requires otherwise:
  - (i) The plural and singular forms include the other;
  - (ii) "Shall," "will," "must," and "agrees" are each mandatory;
  - (iii) "may" is permissive;
  - (iv) "or" is not exclusive;

- (v) "includes" and "including" are not limiting; and
- (vi) "between" includes the ends of the identified range.
- (b) The masculine gender shall include the feminine and neuter genders and vice versa.
- (c) Reference to any agreement, document, instrument, or report means such agreement, document, instrument or report as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof
- (d) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder. [Peace Agreement § 1.2.]
- (e) "Best Efforts" as defined in section 1.1 (k) above, shall be construed to mean that indifference and inaction do not constitute Best Efforts. However, futile action(s) are not required. [Peace Agreement § 1.1(d).]
- (f) OBMP Assessments as defined in section 1.1(zz) above, shall be deemed Administrative Expenses under Paragraph 54 of the Judgment. OBMP Assessments do not include assessments levied as provided in Section 5.1(g) of the Peace Agreement. Upon the expiration of the Peace Agreement, no conclusion of "general benefit" may be drawn based upon the manner in which the assessments have been made during the term of the Peace Agreement. [Peace Agreement § 1.1(cc).]
- (g) The definition of the terms Recharge and Recharge Water in section 1.1(ttt) above, shall not be construed to limit or abrogate the authority of CBWCD under general law. [Peace Agreement § 1.1(nn).]
- (h) The right of a party to receive a credit if Watermaster compels a Groundwater Production facility to be shut down and/or moved under section 4.5 below, shall not be construed in determining the extent of Watermaster's authority under the Judgment, if any, to compel the shut-down of a well.
- (i) These Rules and Regulations should not be construed as placing any limitation on the export of Supplemental Water other than as may be provided in the Judgment, except as may be necessary as a condition to prevent Material Physical Injury (see specifically section 8.3 below).

1.3 Consistency with Judgment, Peace Agreement, and Peace II Agreement. These Rules and Regulations shall be construed consistent with the Judgment, the Peace Agreement, and the Peace II Agreement. In the event of a conflict between these Rules and Regulations and the Judgment, the Peace Agreement, or the Peace II Agreement, the Judgment, the Peace



Agreement, and Peace II Agreement shall prevail. In the event of a conflict between the Peace Agreement, or the Peace II Agreement and the Judgment, the Judgment shall control.

- 1.4 No Prejudice. No provision of these Rules and Regulations shall be used to construe the power and authority of the Advisory Committee or the Watermaster Board inter-se under the Judgment.
- 1.5 Amendment of Rules. These Rules and Regulations may be amended by Watermaster only upon the prior approval of the Watermaster Advisory Committee.
- 1.6 Repeal of Existing Rules and Regulations. Watermaster's existing Rules and Regulations are repealed upon the adoption of this 2022 Update to the 2019 Chino Basin Watermaster Rules and Regulations and along with the previously repealed Uniform Groundwater Rules and Regulations, they will have no further force and effect. However, all other rules and regulations, which includes the Rules for the Advisory Committee and for each of the three Pools, shall remain in effect.

## ARTICLE II ADMINISTRATION

- 2.0 Principal Office. The principal office of Watermaster shall be the Chino Basin Watermaster business office, currently located at 9641 San Bernardino Road, Rancho Cucamonga, California 91730, telephone number 909-484-3888, fax number 909-484-3890, and e-mail [info@cbwm.org](mailto:info@cbwm.org), or at such other location or locations as may be designated from time to time by Watermaster Resolution and filed with the Court.
- 2.1 Records. The minutes of Watermaster meetings shall be open to inspection and maintained at the principal office. [Based on Judgment ¶ 37(d).] Copies of minutes may be obtained upon payment of the duplication costs thereof. Copies of other records may be obtained on the payment of the duplication costs thereof and pursuant to Watermaster policy. Watermaster shall maintain a website (presently [www.cbwm.org](http://www.cbwm.org)). Watermaster Staff shall publish those records and other matters that it deems to be of interest to the parties to the Judgment, the general public or the Court on its website.
- 2.2 Regular Meetings. Regular meetings shall be held at the principal office of Watermaster pursuant to Watermaster policy at such time(s) as may be contained in the necessary notice(s) thereof [Based on Judgment ¶ 37 (b).] As a matter of policy, Watermaster shall generally operate in accordance with the provisions of the California Open Meetings Law (Brown Act). However, in the event of conflict, the procedures set forth in these Rules and Regulations shall control.
- 2.3 Special Meetings. Special meetings may be called at any time by a majority of the Watermaster Board by delivering notice thereof at least twenty-four (24) hours before the time of each such meeting in the case of personal delivery (including faxes and e-mail), and ninety-six (96) hours in the case of mail. [Based on Judgment ¶ 37 (c).]
- 2.4 Adjournment. Any meeting may be adjourned to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted forthwith on or near the door of the place where the meeting was held. [Based on Judgment ¶ 37 (e).]
- 2.5 Public Meetings/Hearings. All meetings, whether regular or special, shall be open to the public unless they are properly designated as a confidential session. Whenever a Public Hearing shall be required therein, written notice of such public hearing containing the time, date and place of Public Hearing, together with the matter to be heard thereat, shall be given to all Active Parties and each such person who has requested, in writing, notice of such meeting, at least ten (10) days prior to said Public Hearing. At such Public Hearing, evidence shall be taken with regard to only the matters noticed, unless a sufficient urgency shall exist to the contrary, and full findings and decisions shall be issued and made available for public inspection. Notwithstanding the provisions of this section 2.5, the provisions of Article X shall control when applicable.

2.6 Confidential Sessions.

- (1) The Watermaster Board may hold confidential sessions authorized by this Rule .A confidential session may be held by the Watermaster Board and, at a minimum, the chairs of the three Pools (Appropriative, Agricultural and Non-Agricultural) to, in a manner consistent with the Judgment:
  - (i) meet with counsel to discuss or act on pending or threatened litigation involving Watermaster; or
  - (ii) discuss personnel matters of Watermaster employees involving individual employees; or
  - (iii) discuss contract negotiations involving Watermaster.
- (2) Minutes shall not be taken for confidential sessions of the Watermaster Board, but a confidential memorandum shall be prepared to describe attendance and votes on decisions.
- (3) Notice of confidential sessions of the Watermaster Board shall be as provided in section 2.7.
- (4) A report on any action taken at the confidential session of the Watermaster Board shall be given both immediately following the conclusion of the confidential session and at the next regular meeting of the Watermaster Board.
- (5) The Advisory Committee may hold a confidential session on any matter authorized by its own resolution.

2.7 Notice. Notices shall be given in writing to all Active Parties and each such person who has requested notice in writing, and shall specify the time and place of the meeting and the business to be transacted at the meeting. Notice may be provided by either facsimile or e-mail delivery if the party so consents to such delivery. [Based on Judgment ¶ 37(c).] Delivery of notice shall be deemed made on the date personally given or within ninety-six (96) hours of deposit thereof in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such person. Copies of all notices shall be published on the Watermaster website. Watermaster will maintain a current list of the names of active parties and their addresses for the purpose of providing service, and will maintain a current list of the names and addresses of all parties to the Judgment. [Judgment ¶ 58.]

2.8 Quorum. A majority of the Board acting as Watermaster shall constitute a quorum for the transaction of the affairs or business. [Based on Judgment ¶ 35.]

2.9 Voting Procedures. Only action by affirmative vote of a majority of the members of the Watermaster Board present and acting as Watermaster shall be effective. All actions may

be adopted by voice vote, but upon demand of any member of a Board acting as Watermaster, the roll shall be called and the ayes and noes recorded in the minutes of the proceedings. Every member of a Board acting as Watermaster, in attendance, unless disqualified by reason of an opinion of the Watermaster counsel that the member of the board has a conflict of interest, shall be required to vote.

- 2.10 Conflict of Interest. Watermaster is an interest based governing structure in which various interests must be represented in decision-making. It is expected and preferred that each interest be allowed to participate in Watermaster decisions except as provided in these Rules and Regulations. Each member of the Watermaster Board or the Advisory Committee shall vote on matters before the Board or Advisory Committee unless that member has a conflict of interest as described in this Rule or other provision of general law. No member of the Watermaster Board or Advisory Committee may vote, participate in meetings or hearings pertaining to, or otherwise use his or her position to influence a Watermaster decision in which he knows or has reason to know he has both a direct personal and financial interest.
- (a) Subject to the qualification provided for in section 2.10(b) herein, a member of the Watermaster Board or Advisory Committee is deemed to have a direct personal and financial interest in a decision where it is reasonably foreseeable that the decision will have a material effect on the Watermaster member, members of his or her immediate family, or the Watermaster member's other business, property, and commercial interests.
  - (b) To be classified as a direct personal and financial interest, the particular matter must be distinguishable from matters of general interest to the respective pool (Appropriative, Non-Agricultural, or Agricultural) or party to the Judgment, which the Watermaster member has been appointed to represent on the Watermaster Board or Advisory Committee. The member must stand to personally gain discrete and particular advantage from the outcome of the decision beyond that generally realized by any other person or the interests he or she represents. Moreover, Watermaster representatives are expressly intended to act in a representative capacity for their constituents. A member of the Board or Advisory Committee shall not be considered to have a discrete and particular financial advantage unless a decision may result in their obtaining a financial benefit that is not enjoyed by any other person. In those instances where the Board member or Advisory Committee member does have a conflict of interest, that respective interest may be represented by that interest's designated alternate and the Board or Advisory Committee member with the identified conflict of interest may address the Board or Committee or participate in the hearing or meeting as a party to the Judgment.
- 2.11 Minutes. The secretary (or in the absence thereof any person so designated at said meeting) shall cause the preparation and subscription of the minutes of each meeting and make available a copy thereof to all Active Parties and each person who has filed a request for copies of all minutes or notices in writing. The minutes shall constitute notice of all actions

therein reported. Unless a reading of the minutes is ordered by a majority of the members of the Board acting as Watermaster, minutes may be approved without reading. [Based on Judgment ¶ 37(d).] Watermaster shall publish a copy of its minutes on the Watermaster website.

- 2.12 Rules of Order. Except as may be provided herein, the procedures of the conduct of any meeting shall be governed by the latest revised edition of Roberts' Rules of Order. However, such rules, adopted to expedite the transaction of the business in an orderly fashion, are deemed to be procedural only and failure to strictly observe such rules shall not affect the jurisdiction or invalidate any action taken at a meeting that is otherwise held in conformity with law.
- 2.13 Compensation. Members of Watermaster shall receive compensation from Watermaster for attendance at meetings, regular or special, in an amount as approved by the Court, together with reasonable expenses related to the respective activities thereof, subject to applicable provisions of law. A Watermaster Board member has three Options with regard to payment of compensation. Option 1 is have the payment payable directly to the Board member under the Board member's name; Option 2 is to have the payment payable directly to the Board member's employer/agency; and Option 3 is for the Board member to waive the compensation payment. Option 1 or 2 requires completion and submission of a signed W •9 form. [Based on Judgment ¶ 18 (as amended).]
- 2.14 Employment of Experts and Agents. Watermaster may employ or retain such administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as it may deem appropriate and shall require appropriate bonds from all officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of allocating costs of such services as well as of all other expenses of Watermaster administration as between the several pools established by the Physical Solution of the Judgment. No member of the Watermaster Advisory Committee or any Pool Committee may be employed or compensated by Watermaster for professional or other services rendered to such committee or to Watermaster other than as provided in section 2.13 above. [Based on Judgment ¶ 20.]
- 2.15 Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all necessary facilities and equipment; provided, that it is not the intent of the Judgment that Watermaster acquire any interest in real property or substantial capital assets. [Judgment ¶ 19 and Peace Agreement § 5.1(h).]
- 2.16 Investment of Funds. Watermaster may hold and invest all Watermaster funds in investments authorized from time to time for public agencies of the State of California, taking into consideration the need to increase the earning power of such funds and to safeguard the integrity thereof. [Based on Judgment ¶ 23.]
- 2.17 Borrowing. Watermaster may borrow from time to time, amounts not to exceed the annual anticipated receipts of Watermaster during such year. [Judgment ¶ 24.]

- 2.18 Contracts. Watermaster may enter into contracts and agreements for the performance of any of its powers pursuant to the Judgment.
- 2.19 Cooperation with Other Agencies. Watermaster may, subject to the prior recommendation of the Advisory Committee, act jointly or cooperate with agencies of the United States of America, and the State of California or any political subdivisions, municipalities, districts or any person to the end that the purpose of the Physical Solution of the Judgment may be fully and economically carried out. [Based on Judgment ¶ 26.]
- 2.20 Annual Administrative Budget. Watermaster shall submit to the Advisory Committee, after Pool Committee review and approval, an administrative budget and recommendation for action for each subsequent Fiscal Year on or before March 1. The Advisory Committee shall review and submit the budget and their recommendations to Watermaster on or before April 1, next following. Watermaster shall hold a public hearing on the budget which was approved by Advisory Committee at an April meeting of each year and adopt the annual administrative budget which shall include the administrative items for each committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to make a proper allocation of expenses among the several pools, together with Watermaster's proposed allocation. The budget shall contain such additional comparative information or explanation as the Advisory Committee may recommend from time to time. Expenditures within the budgeted items may thereafter be made by Watermaster in the exercise of its powers, as matter of course. Any budget transfer in excess of 20% of a budget category, or modification of the administrative budget during any year shall be first submitted to the Advisory Committee for review and recommendation. [Based on Judgment ¶ 30.]
- 2.21 Annual Report. Watermaster shall prepare and make available an annual report, which shall be filed on or before January 31 of each year and shall contain details as to the operation of each of the pools, a certified audit of all assessments and expenditures pursuant to the Physical Solution of the Judgment and a review of Watermaster activities. [Based on Judgment ¶ 48.] The annual report shall generally include an update on the status of the parties' efforts to implement the OBMP. On a biannual basis, the annual report shall include an engineering appendix which contains a more specific "state of the Basin" report including an update on the status of individual OBMP related activities such as monitoring results and Watermaster's analysis of Hydrologic Balance. The annual report shall also include a compilation of any amendments to these Rules and Regulations made by Watermaster during the prior twelve (12) months and serve as notice to the Court of the amendments.
- 2.22 Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool Committee and in accordance with Paragraph 54(b) of the Judgment, undertake relevant studies of hydrologic conditions, both quantitative and qualitative, and operating aspects of implementation of the Chino Basin OBMP. [Judgment ¶ 27.]
- 2.23 Demonstrated CEQA Compliance. Watermaster shall not approve any request made under the Judgment or these Rules and Regulations where the proposed action also constitutes a

"project" within the meaning of CEQA unless the Watermaster finds that the person requesting Watermaster approval has demonstrated CEQA compliance.

- 2.24 Notice of Litigation. Watermaster shall provide reasonable notice to the parties to the Judgment of any threatened or existing litigation affecting Watermaster or that challenges the legality, validity, or enforceability of the Judgment, the Peace Agreement, the OBMP Implementation Plan or the Rules and Regulations.
- 2.25 Defense of Judgment. Watermaster shall reasonably defend the Judgment, the Peace Agreement, the Peace II Agreement, the OBMP Implementation Plan, and these Rules and Regulations against challenges brought by persons who are not parties to the Judgment. These costs incurred by Watermaster in defending the Judgment, the Peace Agreement, the Peace II Agreement, the OBMP Implementation Plan, and these Rules and Regulations shall be considered a Watermaster general administrative expense. However, the State of California shall not be obligated to reimburse Watermaster for any legal or administrative costs incurred in such defense. [Based on Peace Agreement § 4.1.]
- 2.26 Written Reports. All reports required to be provided by Watermaster under these Rules and Regulations shall be provided in written form unless the context requires otherwise.
- 2.27 Interventions. Watermaster will receive and make recommendations regarding petitions for intervention and accumulate them for filing with the Court from time to time. [Judgment ¶ 60 and Order re Intervention Procedures, July 14, 1978.]
- 2.28 Advisory Committee and Pool Administration. Administration of each of the three Pools is not governed by these Rules and Regulations. Each of these entities has its own rules and shall thereby be governed by those rules. The Advisory Committee shall also be governed by its own rules and procedures. However, when these Rules and Regulations make express reference to the Advisory Committee and the context requires such a construction, these Rules and Regulations shall control.

### **ARTICLE III MONITORING**

- 3.0 Scope. Watermaster will carry out the monitoring activities described under Program Element 1 of the OBMP and, as described in the OBMP Implementation Plan. Monitoring procedures not described by this Article III, shall be implemented through the development of appropriate Watermaster policies and procedures as necessary. Any such policies and procedures adopted by resolution or minute action shall be reported to the Court in Watermaster's annual report.
- 3.1 Meters. This section sets forth Watermaster's rules and procedures for monitoring Groundwater Production by metering.
- (a) Reporting. Any person Producing in excess of ten (10) acre-feet per year shall install and maintain in good operating condition, at the cost of each such person except as provided in (b) below, such meters as Watermaster may deem necessary. Any such measuring device shall be subject to regular inspection and testing as the Watermaster may, from time to time, require, but at a minimum every two years. [Judgment ¶ 21.]
  - (b) Watermaster shall provide a meter testing service with a complete line of carefully calibrated test equipment. Any Producer may request an evaluation of any or all of its water meters at any time. Watermaster shall only pay for tests initiated by Watermaster and for all tests on meters owned by Watermaster
  - (c) Agricultural Pool Meters.
    - (i) Any assessment levied by Watermaster on the members of the Agricultural Pool to fund the installation of meters which is set forth in the Judgment, paragraph 21 regarding metering, shall be paid by the Appropriative Pool. Members of the Agricultural Pool, shall have no obligation to pay for or assume any duty with regard to the installation of meters. The obligation to install and maintain and replace meters on wells owned or operated by members of the Agricultural Pool shall be that of the Watermaster. [Peace Agreement § 5.6(a).]
    - (ii) Agricultural Pool meters shall be installed within thirty-six (36) months of the Date of Execution. Watermaster shall be responsible for providing the meter, as well as paying the cost of any installation, maintenance, inspection, testing, calibrating and repairing. The members of the Agricultural Pool shall provide reasonable access during business hours to a location reasonably appropriate for installation, inspection, testing, calibrating and repairing of a meter. [Peace Agreement § 5.6(b).] However, the State of California reserves its right to continue to install, operate, maintain, inspect, test and repair its own meters on wells owned or operated



by the State, unless it consents to installation by Watermaster in which case Watermaster assumes the cost. [Peace Agreement § 5.6(c).]

- (iii) Watermaster shall test every Agricultural Pool meter other than those owned by the State of California on an active well under Watermaster's jurisdiction at least once every two years.

3.2 Reporting by Producers. Each party, or Responsible Party Producing water from the Basin, shall file with Watermaster on forms provided therefore, a quarterly report of the total water Production of that Producer during the preceding calendar quarter, together with such additional information as Watermaster and/or the affected Pool Committee may require. The report shall be due on the 15th day of the month next succeeding the end of each respective calendar quarter, i.e., April 15, July 15, October 15 and January 15, except for minimal Producers, whose reports are due annually by July 15. [Judgment ¶ 47.] Watermaster shall annually estimate the quantity of water Produced by "minimal producers" by any reasonable means, including but not limited to the use of a water duty factor dependent upon the type of use and/or acreage.

3.3 Error Corrections. All reports or other information submitted to Watermaster by the parties shall be subject to a four-year limitations period regarding the correction of errors contained in such submittals. In addition, all information generated by Watermaster shall be subject to the same four-year limitations period. All corrections to errors shall apply retroactively for no more than four years.

**ARTICLE IV**  
**ASSESSMENTS, REIMBURSEMENTS AND CREDITS**

- 4.0 Scope. This Article sets forth Watermaster's rules and procedures regarding, assessments, reimbursements and credits.
- 4.1 Assessments. Watermaster shall levy assessments against the parties (other than Minimal Producers complying herewith) based upon Production during the preceding Production period. The assessment shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool. [Based on Judgment ¶ 53.] Assessments shall cover the cost of Replenishment Water and the expenses of Watermaster administration which shall be categorized as either (a) general, or (b) special project expense.
- (a) General Administrative Watermaster Expense shall include office rental, general personnel expense, supplies and office equipment and related incidental expense and general overhead. [Judgment ¶ 54(a).]
  - (b) Special Project Expense shall consist of special engineering, economic or other studies, litigation expense, meter testing or other major operating expenses. Each such project shall be assigned a task order number and shall be separately budgeted and accounted for. [Judgment ¶ 54(b).]
  - (c) General Watermaster administrative expense shall be allocated and assessed against the respective pools based upon allocations made by the Watermaster, who shall make such allocations based upon generally-accepted cost accounting methods. [Judgment ¶ 54.]
  - (d) Special project expense shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express assent and finding of benefit by the appropriate Pool Committee, or pursuant to written order of the Court. [Judgment ¶ 54.]
  - (e) Minimal Producers shall be exempted from payment of assessments upon filing of the Production reports referred to in section 3.2 hereof and payment of an annual five dollar (\$5.00) administrative fee with the annual Production report. [Based on Judgment ¶ 52.] In addition, any Minimal Producer who is a member of the Appropriative Pool or the Non-Agricultural Pool and who has no quantified right to Produce water, shall pay a replenishment assessment upon the water that it Produces.
  - (f) Notwithstanding the foregoing, Watermaster shall levy assessments for the 6,500 acre-feet per year as provided in section 5.1(g) of the Peace Agreement and the cost and allocation of this Supplemental Water shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's assigned share of Operating Safe Yield. [Peace Agreement § 5.1(g)(ii) (inclusion

of word "Operating" to correct mis-phrasing of Peace Agreement as required by the context in the Peace Agreement).]

- 4.2 OBMP Assessments. Watermaster Assessments for implementation of the OBMP shall be considered a Watermaster Administrative Expense pursuant to paragraph 54 of the Judgment.
- 4.3 Assessment - Procedure. Assessments shall be levied and collected as follows:
- (a) Notice of Assessment. Watermaster shall give written notice of all applicable assessments to each party as provided in the Judgment not later than October 31 of each year [Judgment ¶ 55(a).];
  - (b) Payment. Each assessment shall be payable on or before thirty (30) days after the date of invoice, and shall be the primary obligation of the party or successor owning the water Production facility at the time written notice of assessment is given, even though prior arrangement for payment by others has been made in writing and filed with Watermaster [Judgment ¶ 55(b).]; and
  - (c) Delinquency. Any delinquent assessment shall incur a late charge of ten (10%) percent per annum (or such greater rate as shall equal the average current cost of borrowed funds to the Watermaster) from the due date thereof. Delinquent assessments and late charge may be collected in a show-cause proceeding instituted by the Watermaster, in which case the Court may allow Watermaster's reasonable cost of collection, including attorney's fees. [Judgment ¶ 55(c).]
- 4.4 Assessment Adjustments. The Watermaster shall make assessment adjustments in whole or in part for assessments to any Producer as a result of erroneous Production reports or otherwise as necessary for the reporting period as either a credit or debit in the next occurring assessment package unless otherwise decided by Watermaster.
- (a) All assessments will be based on the assumption that appropriate, timely filed and pending Applications will be approved by Watermaster. If any such Applications are not approved, a supplemental assessment may be levied.
  - (b) Assessment adjustments may be necessary due to overstated Production, understated Production, or errors in the assessment package discovered after the assessments have been approved.
  - (c) Watermaster may cause an investigation and report to be made concerning questionable reports of Production from the Basin.
  - (d) Watermaster may seek to collect delinquent assessments and interest in a show-cause proceeding in which case the Court may allow Watermaster its reasonable costs of collection, including attorney's fees. [Judgment ¶ 55(c).] Alternately,

Watermaster may bring suit in a court having jurisdiction against any Producer for the collection of any delinquent assessments and interest thereon. The court, in addition to any delinquent assessments, may award interest and reasonable costs including attorney's fees.

- 4.5 Credits Against OBMP Assessments and Reimbursements. Watermaster shall exercise reasonable discretion in making its determination regarding credits against OBMP Assessments and reimbursements, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future OBMP Assessments under this section where the Producer or party to the Judgment was otherwise legally compelled to make the improvement. [Peace Agreement § 5.4(d).]
- (a) Any party to the Judgment may make Application for credits against OBMP assessments or for reimbursement by filing a timely Application pursuant to the provisions of this section and Article X of these Rules and Regulations.
  - (b) A party to the Judgment is eligible to be considered for credits or reimbursement for those documented capital, operations and maintenance expenses, including the cost of shutting down and/or relocating Groundwater Production facilities, that are reasonably incurred in the implementation of any project or program that carries out the purposes of the OBMP and specifically relates to the prevention of subsidence in the Basin, upon approval of the request by Watermaster. [Peace Agreement § 5.4(d), as amended.] The purposes of the OBMP shall be those goals set forth in the Phase I Report as implemented through the OBMP Implementation Plan in a manner consistent with the Peace Agreement. [July 13, 2000 Court Order.]
  - (c) Any Producer that Watermaster compels to shut down and/or move a Groundwater Production facility that is in existence on August 1, 2000 shall have the right to receive a credit against future Watermaster assessments or reimbursement up to the reasonable cost of the replacement Groundwater Production facility, including the legal rate of interest on California Judgments. [Peace Agreement § 5.4(e).] In its sole discretion, Watermaster may determine to issue full reimbursement upon approval of the Application or to issue a credit against future Watermaster assessments. However, in the event Watermaster elects to provide a credit in lieu of reimbursement, it must have fully compensated the Producer for the reasonable cost of the replacement Groundwater Production facility through any combination of credits and reimbursements within five years from the date of the Application, unless the Producer consents in writing to a longer period. Note: this section is subject to a rule of construction. See section 1.2(h) above.
  - (d) An Application to Watermaster for reimbursement or a credit against OBMP Assessments shall be considered timely, if and only if the Application has been

approved by Watermaster in advance of construction or the offer by a party to dedicate the facility to carry out the purposes of the OBMP as described in (b) above. [Based on Peace Agreement § 5.4(d).]

- 4.6 Agricultural Pool Assessments and Expenses. During the term of the Peace Agreement, all Assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool. This includes but is not limited to OBMP Assessments, assessments pursuant to paragraphs 20, 21, 22, 30, 42, 51, 53, 54 (both general administrative expenses and special project expenses), 55, and Exhibit F (Agricultural Pool Pooling Plan) of the Judgment except however in the event the total Agricultural Pool Production exceeds 414,000 acre-feet in any five consecutive year period as defined in the Judgment, the Agricultural Pool shall be responsible for its Replenishment Obligation pursuant to paragraph 45 of the Judgment. [Peace Agreement § 5.4(a).]
- 4.7 Replenishment Assessments. Watermaster shall levy and collect assessments in each year, pursuant to the respective pooling plans, in the amount of the Replenishment Obligation (including any Desalter Replenishment) for any pool during the preceding year. [Based on Judgment ¶ 51.]
- 4.8 Desalter Replenishment Assessments and Credits. The price of Desalted water to a purchaser of Desalted water does not include the cost of Replenishment. The source of Replenishment shall be those provided in Article VII herein, Article VII of the Peace Agreement, and Article VI of the Peace II Agreement. However, a purchaser of Desalted water may elect to obtain a reduced Assessment levied by Watermaster by dedicating by Transfer, or assignment, some or all of its Production rights to Watermaster for the purpose of satisfying Desalter Replenishment. The amount of the credit granted by Watermaster shall be equal to the value of the cost of Replenishment Water then available from the MWD as interruptible, untreated water or the then prevailing value of the avoided Replenishment Obligation, whichever is less. For purposes of determining Replenishment assessments, water Produced by the Desalters shall be considered Production by the Appropriative Pool.
- 4.9 Consistency with Peace Agreement. The procurement of Replenishment Water and the levy of Assessments shall be consistent with the provisions of section 5.4(a) of the Peace Agreement.
- 4.10 OBMP Committee. Watermaster shall establish a subcommittee (OBMP Committee) for the purpose of coordinating fund raising efforts in furtherance of the OBMP.
- (a) The subcommittee shall hold a regularly scheduled meeting a minimum of once every quarter.
  - (b) Prior to each subcommittee meeting, Watermaster shall prepare a summary of the funds, loans or grants secured for the purpose of implementing the OBMP over the

past three months and distribute any information it may possess regarding the availability of other potential funds, loans or grants.

**ARTICLE V  
PHYSICAL SOLUTION**

- 5.0 Scope. This Article generally sets forth the standards for Watermaster implementation of the Physical Solution established by the Judgment, including the application of these standards to Watermaster conduct and decisions under the Judgment, these Rules and Regulations and the OBMP.
- 5.1 Physical Solution. It is essential that this Physical Solution provide maximum flexibility and adaptability to use existing future, technological, social, institutional and economic options to maximize beneficial use of the waters of the Chino Basin. [Judgment ¶ 40.]
- 5.2 Watermaster Control. Watermaster, with the advice of the Advisory and Pool Committees, is granted discretionary powers in order to develop its OBMP. [Based on Judgment ¶ 41.]
- 5.3 Basin Management Parameters. Watermaster shall consider the following parameters in implementing the Physical Solution under Articles VI - X of these Rules and Regulations:
- (a) Pumping Patterns. Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no Producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "I".]
  - (b) Water Quality. Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster. [Judgment Exhibit "I".]
  - (c) Economic Considerations. Financial feasibility, economic impact and the cost of optimum use of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters. [Judgment Exhibit "I".]

**ARTICLE VI**  
**SAFE YIELD AND OPERATING SAFE YIELD**

- 6.0 Scope. This Article sets forth the rules and procedures that are applicable to Watermaster's regulation, control, and management of Safe Yield and Operating Safe Yield.
- 6.1 Annual Production Right. The Annual Production Right shall be calculated by Watermaster pursuant to the Judgment and the Peace Agreement.
- 6.2 New Yield. The Judgment provides that Safe Yield may need to be periodically adjusted based on more accurate and updated data and based on evidence of increased capture of native water and increased return flow from use of Replenishment or Stored Water. Safe Yield can only be re-determined periodically when long-term data or evidence is developed in support thereof. In order to encourage maximization of Basin Water under the Physical Solution, New Yield shall be accounted for by Watermaster in interim periods between re-determinations of Safe Yield.
- (a) Proven increases in yield in quantities greater than the historical level of contribution from certain Recharge sources may result from changed conditions including, but not limited to, the increased capture of rising water, increased capture of available storm flow, and other management activities. These increases are considered New Yield.
  - (b) To the extent the New Yield arises from conditions, programs or projects implemented and operational after July 1, 2000, it is available for allocation by Watermaster as a component of the Annual Production Right for each member of the Appropriative Pool.
  - (c) As part of the documentation for the assessments and annual report for each year, Watermaster will provide a summary and analysis of the historical recharge and whether there are changed conditions that have resulted in a quantity of New Yield.
  - (d) Except as described in section 6.2(f) below, pursuant to the Peace Agreement and the Peace II Agreement, any New Yield shall first be assigned to offsetting Desalter Replenishment Obligations in the immediately following year and as reasonably required to satisfy expected future Replenishment Obligations arising from the Desalter. If there is water in the Watermaster Desalter Replenishment Account to satisfy the Desalter Replenishment Obligation for the year, the New Yield shall be made available to the Appropriative Pool to satisfy a Replenishment Obligation consistent with section 7.5(a)(3) herein.
  - (e) New Yield is expected to result from a variety of conditions, including but not limited to enhanced Basin management, increased stormwater Recharge, induced Recharge from operation of the Desalters, injection, and changes in land use patterns. Watermaster has established an initial baseline quantity of stormflow



Recharged in the Basin under historical conditions in the amount of 5,600 acre-feet per year. Any party to the Judgment may request Watermaster to re-examine this initial estimate of the baseline quantity and to adjust the quantity in accordance with best available technology and substantial evidence.

- (f) The storm flow component of Recharge determined by Watermaster to be part of New Yield shall be allocated to the Appropriators according to their percentages of Safe Yield under the Judgment. Notwithstanding section 7.5(c) of the Peace Agreement, those amounts will continue to be dedicated in those percentages to the Appropriators if that storm flow Recharge is subsequently determined to be Safe Yield. [First Amendment to Peace Agreement, ¶ 2.]

### 6.3 Accounting of Unallocated Agricultural Portion of Safe Yield.

- (a) In each year, the 82,800 acre-feet being that portion of the Safe Yield made available to the Agricultural Pool under the Judgment, shall be made available in the following sequence:
  - (i) To the Agricultural Pool to satisfy all demands for overlying Agricultural Pool lands;
  - (ii) To supplement, in the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof;
  - (iii) To land use conversions that were completed prior to October 1, 2000;
  - (iv) To land use conversions that have been completed after October 1, 2000; and
  - (v) To the Early Transfer of the quantity of water not Produced by the Agricultural Pool that is remaining after all the land use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement from the Agricultural Pool to the Appropriative Pool in accordance with their pro-rata assigned share of Operating Safe Yield.
- (b) In the event actual Production by the Agricultural Pool exceeds 414,000 acre-feet in any five years, the Agricultural Pool shall procure sufficient quantities of Replenishment Water to satisfy over-Production obligations, whatever they may be.

### 6.4 Conversion Claims. The following procedures may be utilized by any Appropriator:

- (a) Record of Unconverted Agricultural Acreage. Watermaster shall maintain on an ongoing basis a record, with appropriate related maps, of all agricultural acreage

within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph.

- (b) Record of Water Service Conversion. Any Appropriator who undertakes to permanently provide water service to any portion of a legal parcel subject to conversion shall report such change to Watermaster. Watermaster shall ensure that when a partial conversion occurs, that the water use on the acreage is properly metered. For all or any portion of the legal parcel that is proposed for conversion, Watermaster shall thereupon verify such change in water service and shall maintain a record and account for each Appropriator of the total acreage involved. Should, at any time, all or any portion of the converted acreage return to agricultural overlying use, Watermaster shall return such acreage that returns to agricultural use to unconverted status and correspondingly reduce or eliminate any allocation accorded to the Appropriator involved.

#### 6.5 Recalculation of Safe Yield.

- (a) Prior Safe Yield Resets. Pursuant to the Court's Orders for Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, dated April 28, 2017, effective July 1, 2010 and continuing until June 30, 2020, the Safe Yield for the Basin was reset at 135,000 AFY. Pursuant to the Orders Regarding Chino Basin Watermaster Motion Regarding 2020 Safe Yield Reset, Amendment of Restated Judgment, Paragraph 6, dated July 31, 2020, effective July 1, 2020 and continuing until June 30, 2030, the Safe Yield for the Basin was reset at 131,000 AFY. For all purposes arising under the Judgment, the Peace Agreements and the OBMP Implementation Plan, the Safe Yield shall be 131,000 AFY, without exception, unless and until Safe Yield is reset in accordance with the procedures set forth in this Section 6.5, and determined by the Court pursuant to its retained continuing jurisdiction.
- (b) Scheduled Resets. Watermaster will initiate a process to evaluate and reset the Safe Yield by July 1, 2030 as further provided in this Section 6.5. Subject to the provisions of Section 6.5(c) below, the Safe Yield, as it is reset effective July 1, 2030 will continue until June 30, 2040. Watermaster will initiate the reset process, taking into account then prevailing best management practices and advances in hydrological science, no later than July 1, 2028, in order to ensure that the Safe Yield, as reset, may be approved by the court no later than June 30, 2030. (Orders Regarding Chino Basin Watermaster Motion Regarding 2020 Safe Yield Reset, Amendment of Restated Judgment, Paragraph 6, dated July 31, 2020 at 15.) Watermaster must present its evaluation and recommendation regarding Safe Yield for the period July 1, 2030, and ending June 30, 2040, to the Parties to the Judgment no later than January 1, 2030. (Orders Regarding Chino Basin Watermaster Motion Regarding 2020 Safe Yield Reset, Amendment of Restated Judgment, Paragraph 6, dated July 31, 2020 at 15.) Consistent with the provisions of the OBMP Implementation Plan, thereafter Watermaster will conduct a Safe Yield evaluation

and reset process no less frequently than every ten years. This Section 6.5(b) is deemed to satisfy Watermaster's obligation, under Paragraph 3.(b) of Exhibit "I" to the Judgment, to provide notice of a potential change in Operating Safe Yield.

- (c) Interim Correction. In addition to the scheduled reset set forth in Section 6.5(b) above, the Safe Yield may be reset in the event that:
  - (i) with the recommendation and advice of the Pools and Advisory Committee and in the exercise of prudent management discretion described in Section 6.5(e)(iii), below, Watermaster recommends to the court that the Safe Yield must be changed by an amount greater (more or less) than 2.5% of the then-effective Safe Yield.
  - (ii) The California State Water Resources Control Board develops water conservation measures prior to June 30, 2030, that result in a reduction in urban irrigation in the Chino Basin (i.e., reduced Evapotranspiration Adjustment Factors), as required by Water Code § 10609, et seq., that is reasonably likely to materially reduce recharge in the Chino Basin and such measures are determined to change the Safe Yield by more than 2.5% of the then-effective Safe Yield, and Watermaster moves the Court to reset the Safe Yield accordingly.(Orders Regarding Chino Basin Watermaster Motion Regarding 2020 Safe Yield Reset, Amendment of Restated Judgment, Paragraph 6, dated July 31, 2020 at 15.)
- (d) Safe Yield Reset Methodology. The Safe Yield shall be subsequently evaluated pursuant to the methodology set forth in the Reset Technical Memorandum. The reset will rely upon long-term hydrology and will include data from 1921 to the date of the reset evaluation. The long-term hydrology will be continuously expanded to account for new data from each year, through July 2030, as it becomes available. This methodology will thereby account for short-term climatic variations, wet and dry. Based on the best information practicably available to Watermaster, the Reset Technical Memorandum sets forth a prudent and reasonable professional methodology to evaluate the then prevailing Safe Yield in a manner consistent with the Judgment, the Peace Agreements, and the OBMP Implementation Plan. In furtherance of the goal of maximizing the beneficial use of the waters of the Chino Basin, Watermaster, with the recommendation and advice of the Pools and Advisory Committee, may supplement the Reset Technical Memorandum's methodology to incorporate future advances in best management practices and hydrologic science as they evolve over the term of this order.
- (e) Annual Data Collection and Evaluation. In support of its obligations to undertake the reset in accordance with the Reset Technical Memorandum and this Section 6.5, Watermaster shall annually undertake the following actions:

- (i) Ensure that, unless a Party to the Judgment is excluded from reporting, all production by all Parties to the Judgment is metered, reported, and reflected in Watermaster's approved Assessment Packages;
  - (ii) Collect data concerning cultural conditions annually with cultural conditions including, but not limited to, land use, water use practices, production, and facilities for the production, generation, storage, recharge, treatment, or transmission of water;
  - (iii) Evaluate the potential need for prudent management discretion to avoid or mitigate undesirable results including, but not limited to, subsidence, water quality degradation, and unreasonable pump lifts. Where the evaluation of available data suggests that there has been or will be a material change from existing and projected conditions or threatened undesirable results, then a more significant evaluation, including modeling, as described in the Reset Technical Memorandum, will be undertaken; and,
  - (iv) As part of its regular budgeting process, develop a budget for the annual data collection, data evaluation, and any scheduled modeling efforts, including the methodology for the allocation of expenses among the Parties to the Judgment. Such budget development shall be consistent with section 5.4(a) of the Peace Agreement.
- (f) Modeling. Watermaster shall cause the Basin model to be updated and a model evaluation of Safe Yield, in a manner consistent with the Reset Technical Memorandum, to be initiated no later than January 1, 2024, in order to ensure that the same may be completed by June 30, 2025.
- (g) Peer Review. The Pools shall be provided with reasonable opportunity, no less frequently than annually, for peer review of the collection of data and the application of the data collected in regard to the activities described in Section 6.5(d), (e), and (f) above.
- (h) No Retroactive Accounting. Notwithstanding that the initial Safe Yield reset, described in Section 6.5(a) above, was effective as of July 1, 2010, Watermaster will not, in any manner, including through the approval of its Assessment Packages, seek to change prior accounting of the prior allocation of Safe Yield and Operating Safe Yield among the Parties to the Judgment for Production Years prior to July 1, 2014.

## **ARTICLE VII RECHARGE**

7.0 Scope. This Article sets forth the standards that are applicable to Watermaster's review of Recharge actions by all persons that may be subject to the Judgment as well as Watermaster's efforts to administer, direct, and arrange for Recharge in accordance with the Judgment.

### 7.1 In General

- (a) Watermaster shall administer, direct and arrange for the Recharge of all water in a manner pursuant to the Judgment, the Peace and Peace II Agreements and the OBMP in a manner that causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that party. This means that no party to the Judgment shall be individually and independently obligated to purchase or acquire Supplemental Water on behalf of another party to the Judgment. [Peace Agreement § 5.1(e).] Applications to engage in Recharge activities shall be processed in accordance with the provisions of Article X using the forms provided by Watermaster attached hereto as Appendix 1.
- (b) Watermaster shall exercise its Best Efforts to:
  - (i) Protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge [Peace Agreement § 5.1(e).];
  - (ii) Ensure there is sufficient Recharge capacity for Recharge water to meet the goals of the OBMP and the future water supply needs within the Chino Basin [Peace Agreement § 5.1(e).];
  - (iii) Evaluate the long term Hydrologic Balance within all areas and subareas of the Chino Basin;
  - (iv) Make its initial report on the then existing state of Hydrologic Balance by July 1, 2003, including any recommendations on Recharge actions which may be necessary under the OBMP. Thereafter Watermaster shall make written reports on the long term Hydrologic Balance in the Chino Basin every two years;
  - (v) Use and consider the information provided in the reports under (iv) above, when modifying or updating the Recharge Master Plan and in implementing the OBMP;

- (vi) Evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in storage or water rights which is proposed in place of physical Recharge of water to Chino Basin in accordance with the provisions of section 5.3 of the Peace Agreement [Peace Agreement § 5.1(e).];
  - (vii) Cooperate with owners of existing Recharge facilities to expand/improve/preserve Recharge facilities identified in the Recharge Master Plan; arrange for the construction of the works and facilities necessary to implement the quantities of Recharge identified in the OBMP Implementation Plan [Peace Agreement § 5.1(e)(ix)] and cooperate with appropriate entities to construct and operate the new Recharge facilities that are identified in the Recharge Master Plan;
  - (viii) Ensure that its Recharge efforts under the Recharge Master Plan are consistent with the Judgment, and the Peace Agreement;
  - (ix) Establish and periodically update criteria for the use of water from different sources for Replenishment purposes [Peace Agreement § 5.1(e)(v).];
  - (x) Ensure a proper accounting of all sources of Recharge to the Chino Basin [Peace Agreement § 5.1(e)(vi).];
  - (xi) Recharge the Chino Basin with water in any area where Groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin [Peace Agreement § 5.1(e)(vii).];
  - (xii) Maintain long-term Hydrologic Balance between total Recharge and discharge within all areas and sub-areas [Peace Agreement § 5.1(e)(viii).]; and
  - (xiii) Use water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water. [Peace Agreement § 5.1(f).]
- (c) Recharge Master Plan. The Recharge Master Plan will address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and subsequently operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan will be jointly approved by IEUA and Watermaster and shall contain recharge estimations and summaries of the projected water supply availability as well as the physical means to accomplish the recharge projections. Specifically, the Recharge Master Plan will reflect an appropriate schedule for planning, design, and physical improvements as may be required to

provide reasonable assurance that following the full beneficial use of the groundwater withdrawn in accordance with the Basin Re-Operation and authorized controlled overdraft, that sufficient Replenishment capability exists to meet the reasonable projections of Desalter Replenishment obligations. With the concurrence of IEUA and Watermaster, the Recharge Master Plan will be updated and amended as frequently as necessary with Court approval and not less than every five (5) years. [Peace II Agreement § 8.1.]

- (i) Coordination. The members of the Appropriative Pool will coordinate the development of their respective Urban Water Management Plans and Water Supply Master Plans with Watermaster as follows. [Peace II Agreement § 8.2.]
  - a) Each Appropriator that prepares an Urban Water Management Plan and Water Supply Plans will provide Watermaster with copies of its existing and proposed plans.
  - b) Watermaster will use the Urban Water Management Plans in evaluating the adequacy of the Recharge Master Plan and other OBMP Implementation Plan program elements.
  - c) Each Appropriator will provide Watermaster with a draft in advance of adopting any proposed changes to its Urban Water Management Plans and in advance of adopting any material changes to their Water Supply Master Plans respectively in accordance with the customary notification routinely provided to other third parties to offer Watermaster a reasonable opportunity to provide informal input and informal comment on the proposed changes.
  - d) Any Party that experiences the loss or the imminent threatened loss of a material water supply source will provide reasonable notice to Watermaster of the condition and the expected impact, if any, on the projected groundwater use.
- (ii) In preparation of the Recharge Master Plan, Watermaster will consider whether existing groundwater production facilities owned or controlled by producers within Management Zone 1 may be used in connection with an aquifer storage and recovery ("ASR") project so as to further enhance recharge in specific locations and to otherwise meet the objectives of the Recharge Master Plan. [Peace II Agreement § 8.4(d)(2).]
- (d) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. [Peace Agreement § 5.1(h).]

- (e) Watermaster may own and hold water rights in trust for the benefit of the parties to the Judgment. Subject to this exception, Watermaster shall not own land or interests in real property. [Peace Agreement § 5.1(h).] Watermaster shall obtain Court approval prior to acquiring any water rights in trust for the benefit of the parties to the Judgment. In addition, Watermaster shall conform all existing permits to ensure that title is held in trust for the benefit of the parties to the Judgment.
- (f) Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and the Peace Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any. [Peace Agreement § 5.1(h).]
- (g) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge. [Peace Agreement § 5.1(j).]

7.2 Recharge of Supplemental Water. All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval obtained by Application made to Watermaster in accordance with provisions of Article X. [Peace Agreement § 5.1(a).] In reviewing any such Application, Watermaster shall comply with the following.

- (a) Watermaster will ensure that any person may make Application to Watermaster to Recharge the Chino Basin with Supplemental Water pursuant to Article X, including the exercise of the right to offer to sell In-Lieu Recharge Water to Watermaster as provided in the Judgment and the Peace Agreement in a manner that is consistent with the OBMP and the law. [Peace Agreement § 5.1(b).]
- (b) Watermaster shall not approve an Application by any party to the Judgment under Article X if it is inconsistent with the terms of the Peace Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. [Peace Agreement § 5.1(b).]
- (c) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recharge of Supplemental Water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recharge of Supplemental Water must be denied. [Peace Agreement § 5.1(b).]
- (d) Absent a clear showing as to peculiar circumstances or changes, Recharge of the Chino Basin with Supplemental Water conducted through spreading grounds shall be assessed: (i) a 1.5% evaporation loss if the Recharge occurs in November through March; or (ii) a 4.2% evaporation loss if the Recharge occurs in April through October. Such loss shall be a one-time adjustment applicable to the Party



engaging in Recharge. Losses for Recharge through injection wells shall be determined on a case by case basis. [Judgment at ¶41.]

7.3 Recharge of 6,500 Acre-Feet of Supplemental Water in Management Zone 1. Consistent with its overall obligations to manage the Chino Basin to ensure hydrologic balance within each management zone, for the duration of the Peace Agreement (until June of 2030), Watermaster will ensure that a minimum of 6,500 acre-feet of wet water recharge occurs within Management Zone 1 on an annual basis. However, to the extent that water is unavailable for recharge or there is no replenishment obligation in any year, the obligation to recharge 6,500 acre-feet will accrue and be satisfied in subsequent years. [Peace II Agreement § 8.4(d).]

- (a) Watermaster will implement this measure in a coordinated manner so as to facilitate compliance with other agreements among the parties, including but not limited to the Dry-Year Yield Agreements.
- (b) Five years from the effective date of the Peace II Measures, Watermaster will cause an evaluation of the minimum recharge quantity for Management Zone 1. After consideration of the information developed, the observed experiences in complying with the Dry Year Yield Agreements as well as any other pertinent information, Watermaster may increase the minimum requirement for Management Zone 1 to quantities greater than 6,500 acre-feet per year. In no circumstance will the commitment to recharge 6,500 acre-feet be reduced for the duration of the Peace Agreement. [Peace II Agreement § 8.4(e).]

7.4 Sources of Replenishment Water. Supplemental Water may be obtained by Watermaster from any available source. Watermaster shall, however, seek to obtain the best available quality of Supplemental Water at the most reasonable cost for recharge in the Basin. It is anticipated that Supplemental Water for Replenishment of Chino Basin may be available at different rates to the various pools to meet their Replenishment Obligations. If such is the case, each pool will be assessed only that amount necessary for the cost of Replenishment Water to that pool, at the rate available to the pool, to meet its Replenishment Obligation. In this connection, available resources may include, but are not limited to:

- (a) Maximum beneficial use of Recycled Water, which shall be given a high priority by Watermaster [Judgment ¶ 49(a).];
- (b) State Project Water subject to applicable service provisions of the State's water service contracts [Judgment ¶ 49(b).];
- (c) Local Imported Water through facilities and methods for importation of surface and Groundwater supplies from adjacent basins and watersheds [Judgment ¶ 49(c).]; and

- (d) Available supplies of Metropolitan Water District water from its Colorado River Aqueduct. [Judgment ¶ 49(d).]

7.5 Desalter Replenishment. Notwithstanding the provisions of section 7.4, above, for the initial term of the Peace Agreement, the Replenishment obligation attributable to Desalter production in any year will be determined by Watermaster as follows [Peace Agreement § 7.5; Peace II Agreement § 6.2.]:

- (a) Watermaster will calculate the total Desalter Production for the preceding year and then apply a credit against the total quantity from:
  - (i) the Watermaster Desalter replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser Ventures pursuant to the "Salt Offset Agreement" dated October 21, 1993, between Kaiser Ventures and the RWQCB, and other water previously dedicated by the Appropriative Pool [Peace Agreement § 7.5(a).];
  - (ii) dedication of water from the Overlying (Non-Agricultural) Pool Storage Account or from any contribution arising from an annual authorized Physical Solution Transfer in accordance with amended Exhibit G to the Judgment;
  - (iii) New Yield that may be made available to Watermaster through a combination of management programs, actions or facilities, other than the Stormwater component of New Yield, as determined on an annual basis [Peace Agreement § 7.5(b)];
  - (iv) any declared losses from storage in excess of actual losses enforced as a "Leave Behind";
  - (v) Safe Yield that may be contributed by the parties [Peace Agreement § 7.5(c)];
  - (vi) any Production of groundwater attributable to the controlled overdraft authorized pursuant to Exhibit I to the Judgment, as amended.
- (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 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 7.5(a), the OBMP Special Assessment levied by Watermaster will be distributed as provided in Section 9.2 of the Peace II Agreement. The Special OBMP Assessment will be assessed pro-rata on each member's share of Safe Yield.

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

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

$$\begin{aligned} \text{Desalter replenishment obligation contribution} &= (8,500 * \% \\ &\text{Appropriator's share of total initial 49,834 afy Operating Safe Yield}) \\ &+ (1,500 * \% \text{ Appropriator's proportional share of that year's total} \\ &\text{conversion claims}) \end{aligned}$$

A sample calculation of the desalter replenishment obligation contribution for each Appropriative Pool member is shown on Exhibit 4 to the Peace II Agreement, as amended.

- (iii) 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. Desalter Production is excluded from this calculation. A sample calculation of the allocation of the remaining desalter obligation is shown in Exhibit 4 to the Peace II Agreement.<sup>1</sup>
- (iv) Adjusted Physical Production is the Appropriative Pool member's total combined physical production (i.e., all groundwater pumped or produced

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<sup>1</sup> This sample calculation is attached hereto as Exhibit "C."

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%).
  - (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) of the Peace II Agreement), 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) For the purposes of this section 7.5(b), the quantification of any Party's share of Operating Safe Yield does not include either land use conversions or Early Transfers.

- 7.6 Method of Replenishment. Watermaster may accomplish Replenishment by any reasonable method, including spreading and percolation, injection of water into existing or new facilities, in-lieu procedures and acquisition of unproduced water from members of the Non-Agricultural and Appropriative Pools. [Judgment ¶ 50.]
- 7.7 Accumulations. In order to minimize fluctuations in assessments and to give Watermaster flexibility in the purchase and spreading of Replenishment Water, Watermaster may make reasonable accumulations of Replenishment Water assessment proceeds. Interest earned on such retained funds shall be added to the account of the pool from which the funds were collected and shall be applied only to the purchase of Replenishment Water. [Judgment ¶ 56.]
- 7.8 In-Lieu and Other Negotiated Procedures. To the extent good management practices dictate that recharge of the Basin be accomplished by taking surface supplies of Supplemental Water in lieu of Groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, the following in-lieu procedures or other additional procedures as may be negotiated by Watermaster and approved by the Watermaster Advisory Committee shall prevail [Judgment Exhibit "H" ¶ 11.]:
- (a) Designation of In-Lieu Areas. In-lieu areas may be designated by order of Watermaster upon recommendation or approval of the Watermaster Advisory Committee. Watermaster has previously designated the entire Chino Basin as an in-lieu area. In-lieu areas may be enlarged, reduced or eliminated by subsequent order; provided, however, that designation of an in-lieu area shall be for a minimum fixed term sufficient to justify necessary capital investment. However, should in-lieu Area No.1, which has been established by the Court, be reduced or eliminated, it shall require prior order of the Court.
- (b) Method of Operation. Any member of the Appropriative Pool Producing water within a designated in-lieu area who is willing to abstain for any reason from

Producing any portion of its share of Operating Safe Yield in any year, may offer such unpumped water to Watermaster on a form to be provided therefor. In such event, Watermaster shall purchase said water in place, in lieu of spreading Replenishment Water, which may be otherwise required to make up for over Production. The purchase price for in-lieu water shall be the lesser of:

- (i) Watermaster's current cost of Replenishment Water, plus the cost of spreading; or
- (ii) The cost of supplemental surface supplies to the Appropriator, less
  - a) said Appropriator's average cost of Groundwater Production, and
  - b) the applicable Production assessment where the water is Produced.

## **ARTICLE VIII STORAGE**

8.0 Scope. This Article sets forth Watermaster's obligations and responsibilities regarding the management, regulation and control of storage within the Basin.

8.1 In General.

- (a) Watermaster Control. A substantial amount of available Groundwater storage capacity exists in the Basin that is not used for storage or regulation of Basin Waters. It is essential that the use of storage capacity of the Basin be undertaken only under Watermaster control and regulation so as to protect the integrity of the Basin. Watermaster will exercise regulation and control of storage primarily through the execution of Groundwater Storage Agreements. [Judgment ¶ 11.]
- (b) Categories of Groundwater Storage Agreements. There are different categories of storage and different types of Groundwater Storage agreements. Only those Groundwater Storage agreements defined as "Qualifying Storage agreements" require new Watermaster approval. Qualifying Storage agreements will be processed by Watermaster in accordance with the forms provided by Watermaster and attached hereto as Appendix 1.
- (c) Court Notification and Approval. Before it is effective, any Storage and Recovery Agreement entered into pursuant to a Storage and Recovery Program shall first receive Court Approval. With respect to all other Groundwater Storage Agreements, Watermaster shall notify the Court after approval.
- (d) Relationship Between Recapture and Storage. Recapture of water held in a storage account will generally be approved by Watermaster as a component of and coincident with a Groundwater Storage Agreement for Qualifying Storage. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for recovery is not yet known. In such cases, the Applicant may request Watermaster approval of the Qualifying Storage only and subsequently submit and process an independent Application for Recapture under the provisions of Article X.
- (e) Storage of Safe Yield as Carry-Over Water. Any member of the Appropriative Pool or member of the Non-Agricultural Pool who Produces less than its assigned share of Operating Safe Yield or Safe Yield, respectively, may carry such unexercised right forward for exercise in subsequent years. Watermaster shall be required to keep an accounting of Carry-Over Water in connection with said Carry-Over Rights. The first water Produced in any subsequent year, shall be deemed to be in exercise of that Carry-Over Right. If the aggregate remaining Carry-Over Water available to any member of the Appropriative Pool, or member of the Non-Agricultural Pool with Safe Yield, in a given year exceeds its assigned share of

Operating Safe Yield after its demands are met, such Producer shall, as a condition of preserving such Excess Carry-Over Water execute a Local Storage Agreement with Watermaster. A member of the Appropriative Pool shall have the option to pay the gross assessment applicable to said Carry-Over Right in the year in which it occurred. [Judgment Exhibit "G," and Exhibit "H" ¶ 12.]

(f) Storage of Supplemental Water. The rules and procedures for the storage of Supplemental Water are set forth as follows.

(i) Supplemental Water. Each party, its officers, agents, employees, successors, and assigns, has been enjoined and restrained from storing Supplemental Water in Chino Basin for withdrawal, or causing withdrawal of water stored, except pursuant to the terms of a Groundwater Storage Agreement with Watermaster. Any Supplemental Water recharged by any person within Chino Basin, except pursuant to these Rules and Regulations and a Groundwater Storage Agreement, is deemed abandoned and shall not be considered Stored Water. [Judgment ¶ 14.]

(ii) Application for Storage of Supplemental Water. Watermaster will ensure that any person, including but not limited to the State of California and the Department of Water Resources may make Application to Watermaster to store and Recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an Application to store and Recover water if it is inconsistent with the terms of the Peace Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the storage and Recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and Recovery must be denied. [Peace Agreement § 5.2(a)(iii).] Applications for the storage of Supplemental Water shall be processed in accordance with the provisions of Article X.

(g) Rules and Procedures in General.

(i) Any person desiring to store Supplemental Water in the Basin shall make appropriate Application therefor with the Watermaster pursuant to the provisions of this Article and Article X. Supplemental Water stored or Recharged in the Basin, except pursuant to a Groundwater Storage Agreement with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]

(ii) Guidelines and Criteria. Any person, whether a party to the Judgment or not, may make reasonable beneficial use of the available groundwater



storage capacity of Chino Basin for storage of Water pursuant to written agreement with the Watermaster as provided herein. [Judgment ¶ 12.]

- (iii) In the allocation of storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of rights in the Safe Yield or Operating Safe Yield of the Basin shall have priority and preference over storage for export. [Judgment ¶ 12.]
  - (iv) It is an objective in management of the Basin's waters that no Producer shall be deprived of access to the Basin's waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "I" ¶ 1(a).]
  - (v) Maintenance and improvement of water quality shall be given prime consideration. [Judgment Exhibit "I" ¶ 1(b).]
  - (vi) Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties to the Judgment shall be considered equal in importance to water quantity and quality parameters. [Judgment Exhibit "I" ¶ 1(c).]
- (h) Contents of Groundwater Storage Agreements. Each Groundwater Storage Agreement shall include but not be limited to the following components [Judgment Exhibit "I" ¶ 3.]:
- (i) The quantities and the term of the storage right, which shall specifically exclude credit for any return flows;
  - (ii) A statement of the priorities of the storage right as against overlying, Safe Yield uses, and other storage rights;
  - (iii) The delivery rates, together with schedules and procedures for spreading, injection or in-lieu deliveries of Supplemental Water for direct use;
  - (iv) The calculation of storage water losses and annual accounting for water in storage; and
  - (v) The establishment and administration of withdrawal schedules, locations and methods.
- (i) Accounting. Watermaster shall calculate additions, extractions and losses of all Stored Water in Chino Basin, and any losses of water supplies or Safe Yield of Chino Basin resulting from such Stored Water, and keep and maintain for public record, an annual accounting thereof. [Judgment ¶ 29.]

- (j) No Material Physical Injury. Watermaster will ensure that any party to the Judgment may Recapture water in a manner consistent with the Peace Agreement, the OBMP, the Judgment and these Rules and Regulations. Watermaster shall not approve a Recapture plan if it is inconsistent with the terms of Peace Agreement or will cause Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recapture of water by any person shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recapture must be denied.

8.2 Local Storage: Special Considerations. Under a Local Storage Agreement with Watermaster, every party to the Judgment shall be permitted to store its Excess Carry-Over Water and Supplemental Water in the Chino Basin according to the following provisions:

- (a) For the term of the Peace Agreement, Watermaster shall ensure that: (a) the quantity of water actually held in local storage under a Local Storage Agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its Excess Carry-Over Water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of water held pursuant to a Local Storage Agreement, subject only to the loss provisions set forth herein.
- (b) For the term of the Peace Agreement, any party to the Judgment may make Application to Watermaster for a Local Storage Agreement pursuant to the provisions of this Article and Article X, whereby it may store Supplemental Water in the Chino Basin. [Peace Agreement § 5.2(b)(ii).]
- (c) In accordance with Article X, Watermaster shall provide written notice to all interested parties of the proposed Local Storage Agreement prior to approving the agreement.
- (d) Watermaster shall approve the storage of Supplemental Water under a Local Storage Agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then-existing Local Storage Agreements, other than amounts classified as Supplemental Water under the procedure set forth in section 8.1 above, for all parties to the Judgment does not exceed the Maximum Local Storage Quantity; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing the Supplemental Water into Local Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury. [Peace Agreement § 5.2(b)(iv); Second Amendment to Peace Agreement.]

- (e) There shall be a rebuttable presumption that the Local Storage Agreement for Supplemental Water does not result in Material Physical Injury to a party to the Judgment or the Basin. [Peace Agreement § 5.2(b)(v).]
- (f) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage Agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other information Watermaster shall reasonably request. Watermaster shall not grant any person the right to store more than the then-existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental Water and Excess Carryover Water from the Maximum Local Storage Quantity. [Court's Findings and Order, dated July 21, 2021.] This means Watermaster shall not approve requests for the storage of Supplemental Water and Excess Carryover Water in excess of the Maximum Local Storage Quantity. Priorities among the parties to the Judgment shall be on the basis that the completed Applications filed first in time under the provisions of Article X shall have a priority in right up to the amount of the quantity approved by Watermaster.
- (g) After July 1, 2035, Watermaster shall have discretion to place reasonable limits on the further accrual of Excess Carry-Over Water and Supplemental Water in Local Storage. However, during the term of the Peace Agreement, Watermaster shall not limit the accrual of Excess Carry-Over Water for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing Excess Carry-Over Water in Local Storage pursuant to the Settlement Agreement Among Fontana Union Water Company, Kaiser Steel Resources Inc., San Gabriel Valley Water Company and Cucamonga County Water District dated February 7, 1992, to a quantity less than 25,000 acre-feet for the term of the Peace Agreement. [Peace Agreement § 5.2(b)(x).]
- (h) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and section 5.2(c) of the Peace Agreement. [Peace Agreement § 5.2(b)(xi).]
- (i) Watermaster will impose a uniform loss against all water in storage in an amount of 2 (two) percent where the Party holding the storage account: (i) has previously contributed to the implementation of the OBMP as a Party to the Judgment, is in

compliance with their continuing covenants under the Peace and Peace II Agreements or in lieu thereof they have paid or delivered to Watermaster “financial equivalent” consideration to offset the cost of past performance prior to the implementation of the OBMP and (ii) promised continued future compliance with Watermaster’s Rules and Regulations. Where a Party has not satisfied the requirements of subsection (i)(i) and (i)(ii) herein, Watermaster will assess a 6 (six) percent loss. Following a Watermaster determination that Hydraulic Control has been achieved, Watermaster will assess losses of less than 1 (one) percent where the Party satisfies subsection (i)(i) and (i)(ii). [Peace II Agreement § 7.4.]

- (j) Watermaster shall allow water held in storage to be Transferred pursuant to the provisions of section 5.3 of the Peace Agreement as provided in Article X. Storage capacity is not Transferable. [Peace Agreement § 5.2(b)(xiii).]
- (k) Monetary payment shall not be accepted as a form of mitigation for Material Physical Injury where the injury is not confined to a specific party or parties. Where the Material Physical Injury is confined to a specific party or parties, monetary payment may be accepted as a form of mitigation, if acceptable to the affected party or parties.
- (l) Applicants for Local Storage of Supplemental Water agreements shall submit such Application prior to initiation of the placement of the Supplemental Water into storage except as provided in sections 8.1 and 8.2 above.
- (m) Any Supplemental Water stored or recharged in the Basin, except pursuant to a Local Storage Agreement for Supplemental Water with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]

8.3 Groundwater Storage and Recovery Program; Special Considerations. The parties, through Watermaster, may initiate a regional Storage and Recovery (sometimes called "conjunctive use") Program, for the mutual benefit of the Appropriators and the Non-Agricultural Pool in the Chino Basin according to the following provisions:

- (a) Watermaster will ensure that no person shall store water in, and recover water from the Basin, other than pursuant to a Local Storage Agreement, without a Storage and Recovery agreement with Watermaster [Peace Agreement § 5.2(c)(i).];
- (b) A proposed Applicant for a Storage and Recovery Program must submit the information set forth in Article X to Watermaster prior to Watermaster's consideration of an Application for a Storage and Recovery agreement;
- (c) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons [Peace Agreement § 5.2(c)(iii).];

- (d) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.
  - (i) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts. The 500,000 acre-feet target may be comprised of any combination of participants and is in excess of up to an additional 100,000 acre-feet of Supplemental Water and Excess Carry-Over Rights that may be stored under Local Storage Agreements.
  - (ii) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits. [Peace Agreement § 5.2(c)(iv).];
- (e) The members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively "compensation") with the benefits of such compensation to be spread as broadly as possible as directed by the Non-Agricultural and the Appropriative Pools [Peace Agreement § 5.2(c)(v).];
- (f) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to offset the Watermaster's cost of operation, to reduce any assessments on the parties to the Judgment within the Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool [Peace Agreement § 5.2(c)(vi).];
- (g) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval [Peace Agreement §§ 5.2(a)(iii) and 5.2(c)(viii) (labeled "(xiii)");
- (h) Watermaster reserves discretion to negotiate appropriate terms and conditions or to deny any request to enter into a Storage and Recovery Program Agreement. With respect to persons who are not parties to the Judgment, Watermaster reserves complete discretion to ensure that maximum compensation, as defined in section (e) above, is received. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program Agreement upon the record as provided in Article X. However, it may not approve a proposed Storage and Recovery Program Agreement unless it has first imposed conditions to

reasonably and fully mitigate any threatened or potential Material Physical Injury [Peace Agreement § 5.2(c)(ix).];

- (i) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program Agreement as provided in Article X;
- (j) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a Storage and Recovery Agreement; and
- (k) The Parties shall indemnify and defend the State of California and the members of the Agricultural Pool against any lawsuit or administrative proceedings, without limitation, arising from Watermaster's adoption, approval, management, or implementation of a Storage and Recovery Program.
- (l) Any losses from storage assessed as a Leave Behind in excess of actual losses (“dedication quantity”) will be dedicated by Watermaster towards groundwater Production by the Desalters to thereby avoid a Desalter replenishment obligation that may then exist in the year of recovery. Any dedication quantity which is not required to offset Desalter Production in the year in which the loss is assessed, will be made available to the members of the Appropriative Pool. The dedication quantity will be pro-rated among the members of the Appropriative Pool in accordance with each Producer’s combined total share of Operating Safe Yield and the previous year’s actual production. However, before any member of the Appropriative Pool may receive a distribution of any dedication quantity, they must be in full compliance with the 2007 Supplement to the OBMP Implementation Plan and current in all applicable Watermaster assessments. [Peace II Agreement § 7.5.]

#### 8.4 Recapture.

- (a) All Recapture of water held in a storage account under a Groundwater Storage Agreement shall be subject to the requirement that the Recovery of the water not result in Material Physical Injury to a party to the Judgment or the Basin.
- (b) Recapture of water held in a Local Storage Account that pre-exists the adoption of these Rules and Regulations and that was extended by Watermaster in accordance with Article V of the Peace Agreement and these Rules and Regulations until July 1, 2005, shall be in accordance with the provisions of the plan for Recapture previously approved by Watermaster. Any amendments to an approved Recapture plan shall require additional Watermaster's approval under the provisions of Article X.
- (c) A person with an approved plan for Recapture shall have the right to process amendments to the previously approved plan in accordance with the provisions of Article X.

## **ARTICLE IX TRANSFERS**

- 9.0 Scope. Any Transfer shall be made only in accordance with the Judgment, the Peace Agreement section 5.3, the Peace II Agreement, the OBMP and this Article IX.
- 9.1 In General. Watermaster will ensure that any party to the Judgment may Transfer water in a manner that is consistent with the Judgment, the Peace and Peace II Agreements, the OBMP and the law. Watermaster shall approve a Transfer if it is consistent with the terms of the Peace Agreement and Peace II Agreement, and will not cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Transfer of water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Transfer must be denied. Upon receipt of written request by Watermaster, a party to the Judgment shall exercise Best Efforts to provide Watermaster with a preliminary projection of any anticipated Transfer of Production within the Year.
- 9.2 Application to Transfer. A party to the Judgment may make Application to Watermaster to Transfer water as provided in the Judgment under the procedures set forth in Article X.
- (a) Watermaster shall provide reasonable advance written notice to all the Active Parties of a proposed Transfer, prior to approving the Transfer as provided in Article X.
  - (b) Watermaster shall approve the Transfer of water as provided in the Judgment so long as the individual Transfer does not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed Transfer with conditions that fully and reasonably mitigate any threatened or potential Material Physical Injury.
  - (c) There shall be a rebuttable presumption that the Transfer and the Production by the transferee does not result in Material Physical Injury to a party to the Judgment or the Basin.
  - (d) Watermaster shall base any decision to approve or disapprove any proposed Transfer upon the record after considering potential impacts associated with the individual Transfer alone and without regard to impacts attributable to any other Transfers. [Peace Agreement § 5.3(b)(v).] However, nothing herein shall be construed as impairing or restraining Watermaster's duty and discretion with regard to cumulative impacts in the context of section 9.3.
  - (e) Transfers which occur between the same parties in the same year shall be considered as a single Transfer for the purpose of determining Material Physical Injury.

- 9.3 Integrated Watermaster Review. In reviewing Transfers under these Rules and Regulations, Watermaster shall exercise reasonable discretion. Watermaster shall review each proposed Transfer based upon the record before it and considering the potential impacts of the proposed Transfer alone. However, Watermaster shall also consider the cumulative impacts of Transfers generally when carrying out its responsibilities to implement the OBMP and Recharge and monitoring programs authorized by these Rules and Regulations or the Judgment.
- (a) Watermaster will evaluate the cumulative physical impact of Transfers on the Basin, if any, by July 1, 2003, and a minimum of once every two years thereafter.
  - (b) Watermaster will take the results of its evaluation into account when carrying out its obligations under section 7.1 of these Rules and Regulations.
- 9.4 Transfer of Non-Agricultural Pool Production Rights. Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of section 9.2(b) above. The members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution:
- (a) within the Overlying (Non-Agricultural) Pool;
  - (b) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; or
  - (c) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines set forth in the Overlying (Non-Agricultural) Pool Pooling Plan:
    - (i) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. The Pool Committee of the Overlying (Non-Agricultural) Pool may, by affirmative action of its members from time to time, establish a price for such water or a method pursuant to which such price will be established. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;
    - (ii) Except as they may be limited by paragraph 9.4(v) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price at which the water is being offered. Each



Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

- (iii) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9.3(ii) above and at the price at which the water is being offered. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.
- (iv) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (ii) and (iii) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at which the water is being offered and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.
- (v) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.
- (vi) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.
- (vii) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9.3(i)-(iii) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.
- (viii) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6 above, or to affect the rights of any Party under a valid assignment.

- (d) In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.
- (e) Any member of the Non-Agricultural Pool (including without limitation 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 Watermaster required by Section 5(c) of Exhibit "G" to the Judgment), 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. Any such transfer shall be effective upon delivery by the transferor or transferee to Watermaster staff of written notice of such transfer in the form attached hereto as Form 12. The transferee's desalter replenishment obligation shall be credited by the number of acre feet so transferred.

#### 9.5 Early Transfer.

- (a) Pursuant to the Peace Agreement, Watermaster approved an Early Transfer of the quantity of water not Produced by the Agricultural Pool that is remaining after all the land use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement to the Appropriative Pool. The quantity of water subject to Early Transfer under this section shall be the quantity of water not Produced by the Agricultural Pool that is remaining after all the land use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement.
  - (i) 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. [Peace Agreement § 5.3(g)(ii).]
  - (ii) 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. [Peace Agreement § 5.3(g)(iii).]
  - (iii) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool. [Peace Agreement § 5.3(g)(v).]
- (b) The amount of water converted from agricultural use to urban use prior to execution of the Peace Agreement was 2.6 acre-feet per acre, with 1.3 acre-feet per acre being

allocated collectively to all members of the Appropriative Pool with an assigned share of Operating Safe Yield and 1.3 acre-feet per acre being allocated to that Appropriator providing service for that urban use. The rate of 2.6 acre-feet per acre shall be changed to a total of 2.0 acre-feet per acre, all of which shall be allocated upon the conversion of the land use to that party to the Judgment which is a member of the Appropriative Pool, on the Effective Date of the Peace Agreement, and whose Sphere of Influence or authorized service area contains the land ("purveyor"). Upon such conversion of water use the purveyor will pledge that the amount of water needed for such urban land use, when such urban land use is established, up to 2.0 acre-feet of water per acre of land per year will be made available for service for such converted land by purveyor under its then existing standard laws, regulations, rules and policies, or for service arranged by such purveyor, subject only to prohibition of such service by a federal, state agency or court with jurisdiction to enforce such prohibition. The owner of such converted land shall have the right to enforce such pledge by specific performance or writ of mandate under the terms of the Peace Agreement. No monetary damages shall be awarded.

- 9.6 Voluntary Agreement. The members of the Agricultural Pool, including the State of California, shall have the right to engage in a voluntary agreement with an Appropriator which has a service area contiguous to or inclusive of the agricultural land, to provide water allocated from the Agricultural Pool to the overlying land for agricultural use on behalf of the member of the Agricultural Pool unless otherwise prohibited by general law. The Appropriator providing service shall be entitled to a pumping credit to offset Production pursuant to the Peace Agreement section 5.3(i). This provision will be construed as permitting Watermaster to accept new voluntary agreements only to the extent that such voluntary agreements occur within areas eligible for conversion as described in Attachment 1 to the Judgment, previously added to the Judgment as an amendment of the Order of the Court dated November 17, 1995.
- 9.7 Assignment of Overlying Rights. In addition to the Voluntary Agreement under section 9.6 above, should an Appropriator take an assignment of rights from a Non-Agricultural Pool member, the agreement shall provide that the Appropriator may undertake to provide water service to such overlying land, but only to the extent necessary to provide water service to said overlying lands. Watermaster shall make available to members of the Non-Agricultural Pool and/or Appropriative Pool, a standard form which shall be completed and filed with Watermaster. Any assignment, lease and/or license shall be ineffective unless provided on the standard form approved by Watermaster and filed with Watermaster. [Based on Judgment Exhibit "H" ¶ 13; Exhibit "G" ¶ 6.]

**ARTICLE X**  
**APPLICATIONS, CONTESTS AND COMPLAINTS**

- 10.0 Purpose. This Article sets forth the Watermaster rules and procedures for processing requests by a person for: (i) Watermaster approval of Recharge and Transfer; (ii) Qualifying Storage and Recapture; (iii) amendments to previously approved Applications; (iv) reimbursement or a credit for costs incurred by a party to the Judgment in furtherance of the OBMP; and (v) a Complaint for redress arising from an alleged Material Physical Injury to a party to the Judgment or the Basin. However, the procedures described in this Article X shall not be construed to apply to Watermaster actions, decisions, or rules other than as expressly set forth herein. All proceedings hereunder shall be conducted in an expeditious manner.
- 10.1 Notice and Opportunity to be Heard. Watermaster shall provide reasonable notice and opportunity to be heard to any person requesting Watermaster review or approval of any matter arising under this Article.
- 10.2 Judicial Review.
- (a) The Complaint procedures set forth in this Article X are not intended to constitute an exclusive remedy or constitute a requirement that a party to the Judgment exhaust this discretionary remedy. However, a party to the Judgment may elect to avail itself of the procedures set forth herein by filing a Complaint and requesting relief from any actual or threatened Material Physical Injury to any person or to the Basin where the alleged injury arises from the Recharge, Transfer or Qualifying Storage or Recapture of water by any person other than Watermaster.
- (b) Once a party to the Judgment elects to pursue redress under the provisions of this Article, it shall exhaust this process until conclusion unless there is a sudden, unexpected event or emergency that causes a need for immediate judicial review or in the event that the Watermaster has failed to take action on a longstanding request. Thus, other than in the event of an emergency or where Watermaster has engaged in undue delay, a party to the Judgment may not seek judicial review of a Watermaster action on a pending Application or Complaint until the Watermaster Board has taken final action under the provisions of this Article. However, the procedures described in this Article X shall not preclude any party from seeking judicial review of any action, decision or rule of Watermaster in accordance with paragraph 31 of the Judgment.
- 10.3 Applications for Watermaster Approval: In General. Any party to the Judgment requesting approval by Watermaster for the Recharge, Transfer, Qualifying Storage or Recapture of water in the Basin, or reimbursements or credits against OBMP Assessments, or any person requesting approval of an agreement to participate in a Storage and Recovery Program, may make Application to Watermaster as provided in these Rules and Regulations.

- (a) Requests for Watermaster approval shall be processed by Application to the Watermaster.
- (b) All Applications shall be submitted to Watermaster in compliance with the requirements set forth in this Article. Approved forms for use by persons requesting Watermaster approval pursuant to this section are attached hereto as Appendix 1. Watermaster shall have no obligation to process incomplete Applications.
- (c) No person shall obtain a right to engage in the activities subject to an Application to Watermaster under these Rules and Regulations or the Judgment unless and until the proposed action is approved by Watermaster as provided herein.
- (d) Upon approval by Watermaster, the person shall have the right to proceed in accordance with the terms and conditions of the Watermaster approval. The rights of a party shall be construed consistent with the Judgment and subject to the terms and conditions set forth in Watermaster's approval.

10.4 Recharge Applications. Any party to the Judgment may make a request for Watermaster approval to engage in Recharge by submitting an Application to Watermaster that includes the following information.

- (a) The identity of the person proposing to engage in Recharge;
- (b) The quantity of water to be Recharged;
- (c) The quality of water to be Recharged;
- (d) The duration of the Recharge;
- (e) The method of the Recharge; and
- (f) The facilities to be used in the Recharge, and their location.

10.5 Transfer Applications. Any party to the Judgment may request Watermaster's approval for a Transfer by submitting an Application to Watermaster. A party to the Judgment that Produces water may in the same Fiscal Year request approval of a Transfer to offset all or a portion of its Replenishment Obligation, subject to the Watermaster's authority to approve or reject the Application under the provisions of this Article. An Application for Transfer shall include the following information:

- (a) The identity of the transferee and transferor;
- (b) The maximum quantity of water to be Transferred;
- (c) The duration of the Recovery of the quantity of water Transferred;

- (d) The location of the Production facilities from which the water will be Transferred, if known;
- (e) The location of the Production facilities from which the Transferred water will be Recaptured and Produced, if known; and
- (f) The rate of extraction at which the Transferred water will be Recaptured and Produced.

10.6 Qualifying Storage Agreements. A party to the Judgment may request Watermaster's approval of a Local Storage Agreement to store Supplemental Water, or, after July 1, 2005, a party to the Judgment may request Watermaster's approval of the accumulation of Excess Carry-Over Water in the event the party's aggregate Carry-Over Water exceeds its share of assigned Operating Safe Yield or Safe Yield. Prior to July 1, 2005, a party to the Judgment shall also be required to obtain a Local Storage Agreement to store Excess Carry-Over Water, and Watermaster shall approve such agreements under uniform terms and conditions. In addition, so long as there is then less than 100,000 acre-feet of Supplemental Water that was placed in Local Storage after July 1, 2000, a party to the Judgment's request to store Supplemental Water under a Local Storage Agreement shall be approved by Watermaster. The Applicant may include a plan for Recapture within the request for approval of the Qualifying Storage or subsequently identify the proposed plan for Recapture under an independent Application for Recapture or combine the request for subsequent approval in an Application for Transfer.

- (a) Any party to the Judgment may file an Application to store Supplemental Water pursuant to a Local Storage Agreement. The Application shall include the following information:
  - (i) The identity of the person(s) that will Recharge, Store and Recover the water;
  - (ii) The quantity of Supplemental Water to be Stored and Recovered;
  - (iii) The proposed schedule and method for the Recharge of water for Storage, if any;
  - (iv) The proposed schedule for Recovery, if any;
  - (v) The location of the Recharge facilities through which the Stored water will be Recharged, if any;
  - (vi) The location of the Production facilities through which the Stored water will be Recovered, if known; and
  - (vii) The water levels and water quality of groundwater in the areas likely to be affected by the storage and Recovery.

- (b) Each Producer shall have the right to store its un-Produced Carry-Over Water in the Basin. Excess Carry-Over Water placed into Local Storage after July 1, 2005 shall require a Local Storage Agreement with Watermaster. A Producer may file an Application prior to July 1, 2005 for a Local Storage Agreement for Excess Carry-Over Water that will be placed into Local Storage after July 1, 2005. Such an Application shall include the following information:
  - (i) The identity of the person(s) that will store and Recover the Carry-Over Water;
  - (ii) The quantity of Carry-Over Water to be stored and Recovered;
  - (iii) The proposed schedule for the Recovery, to the extent known;
  - (iv) The location of the Production facilities through which the stored Carry-Over Water will be Recovered, to the extent known; and
  - (v) The water levels and water quality of Groundwater in the areas likely to be affected by the Production of the stored Carry-Over Water.

10.7 Storage and Recovery Program. Any person may request Watermaster's approval of an Agreement to participate in a Storage and Recovery Program by submitting an Application to Watermaster that, at a minimum, includes the following information:

- (a) The identity of the person(s) that will Recharge, store and Recover the water as well as its ultimate place of use;
- (b) The quantity of water to be Stored and Recovered;
- (c) The proposed schedule for the Recharge of water for storage, if any;
- (d) The proposed schedule and method for Recovery;
- (e) The location of the Recharge facilities through which the Stored Water will be Recharged;
- (f) The location of the Production facilities through which the Stored Water will be Recovered;
- (g) The water levels and water quality of the Groundwater in the areas likely to be affected by the Storage and Recovery, if known; and
- (h) Any other information that Watermaster requires to be included.

10.8 Recapture. Any person may file an Application for approval of its Recovery of water held in storage. Recapture of water may be approved by Watermaster as a component of and

coincident with a request for approval of Qualifying Storage or a Transfer. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for Recovery is not yet known. An Application for Recapture shall include the following information:

- (a) The identity of the person(s) that Recharged and stored the water;
- (b) The identity of the person(s) that will Recover the water as well as its ultimate place of use;
- (c) The quantity of water to be Recovered;
- (d) The proposed schedule for Recovery;
- (e) The location of the Production facilities through which the Stored Water will be Recovered;
- (f) The existing water levels and water quality of the Groundwater in the areas likely to be affected by the Recovery; and
- (g) Any other information that Watermaster requires to be included.

10.9 Credits Against OBMP Assessments and Reimbursements. Any Producer, including the State of California, may make Application to Watermaster to obtain a credit against OBMP Assessments or for reimbursements by filing an Application that includes the following information:

- (a) The identity of the party to the Judgment;
- (b) The specific purposes of the OBMP satisfied by the proposed project;
- (c) The time the project is proposed to be implemented and a schedule for completion;
- (d) The projected cumulative project costs; and
- (e) The specific capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating Groundwater Production facilities.

10.10 Watermaster Summary and Notification of a Pending Application. Upon Watermaster's receipt of an Application for Recharge, Transfer, Storage, Recapture or for a credit or reimbursement, Watermaster shall prepare a written summary and an analysis (which will include an analysis of the potential for Material Physical Injury) of the Application and provide Active Parties with a copy of the written summary and advance notice of the date of Watermaster's scheduled consideration and possible action on any pending Applications. The notice shall be accompanied by the Watermaster summary and analysis and it shall



reasonably describe the contents of the Application and the action requested by the Applicant. Watermaster shall provide the following minimum notice to the Active Parties:

- (a) Applications for Recharge: 30 (thirty) days.
- (b) Applications for Transfer: 30 (thirty) days.
- (c) Applications for Storage and Recovery: 90 (ninety) days.
- (d) Local Storage Agreement or Recapture: 30 (thirty) days.

10.11 All Applications Considered by Pool Committees. All Applications shall be considered by the Pool Committees. Following its completion of the summary and analysis and the issuance of the required notice as provided in section 10.10, Watermaster Staff shall place the Application on the first available Pool Committee Agenda for each of the respective Pool Committees for consideration, discussion, recommendations or proposed conditions. The Application shall not be considered by the Advisory Committee until at least twenty-one (21) days after the last of the three Pool Committee meetings to consider the matter.

10.12 Watermaster Investigations of Applications. Watermaster may, in its discretion, cause an investigation of the Groundwater or the portion of the Basin affected by a pending Application. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.

10.13 Contesting an Application. Following consideration of an Application by each Pool Committee, a Contest to the Application may be filed by any party to the Judgment. Contests to Applications filed by parties to the Judgment or other persons requesting Watermaster's approval pursuant to this Article shall be submitted in writing a minimum of fourteen (14) days prior to the date scheduled for Advisory Committee consideration and possible action. The Contest shall describe the basis for the Contest and the underlying facts and circumstances. Watermaster shall provide notice of the Contest to the Active Parties.

10.14 Contents of a Contest.

- (a) Each Contest shall include the name and address of the Contestant and show that the Contestant has read either the application or the related notice.
- (b) If the Contest is based upon the allegation that the proposed action may result in Material Physical Injury to a party to the Judgment or the Basin, there shall be an allegation of the specific injury to the Contestant or to the Basin which may result from the proposed action and an identification of any then available evidence to support the allegation. If the Contest identifies documentary evidence other than Watermaster records or files, the Contestant shall serve copies of the documentary evidence on Watermaster and the Applicant seven (7) days prior to the hearing. If

relevant to the Contest, the Contestant shall provide Watermaster with the location of the Contestant's extraction and place of use. The location shall be described with sufficient accuracy so that the position thereof relative to the proposed action may be determined. If relevant to the Contest, the Contestant shall describe the Contestant's purpose of use.

- (c) If a Contest is based upon other grounds it shall summarize the grounds of the Contest.
- (d) The Contest shall set forth any conditions or amendments to the proposed action which, if agreed upon, would result in withdrawal of the Contest.
- (e) If Watermaster finds the Contest fails to comply with this provision, it may reject the Contest and deny the request for hearing if the Contestant fails to correct the defect and file a proper Contest within five (5) business days of the Watermaster's rejection. In any instance where a rebuttable presumption is applicable, the Watermaster shall include a statement in the rejection of the Contest that the Contestant has failed to reference any potential substantial evidence to overcome the presumption of no Material Physical Injury.

10.15 Extensions of Time and Continuance for Good Cause. An Applicant or Contestant may request an extension of time to file a Contest and Answer or for a continuance of a scheduled hearing and the request may be granted by Watermaster staff where good cause exists.

10.16 Applicant May Answer the Contest. An Applicant or project proponent may elect to file a written Answer to any Contest.

- (a) Contents. An Answer shall be responsive to the allegations contained in the Contest.
- (b) Time for Filing. Answers shall be filed at least seven (7) days prior to the scheduled hearing. If the Applicant intends to rely on documentary evidence other than Watermaster records or files, the Applicant shall serve copies of the documentary evidence upon Watermaster and the Contestant a minimum of three (3) days prior to the hearing.

10.17 Uncontested Applications by Parties to the Judgment.

- (a) The Advisory Committee and Board shall consider and may approve any uncontested Application. No hearing shall be required for an uncontested Application by a party to the Judgment unless there is good cause to hold a hearing. Where good cause appears, the Advisory Committee and the Board may deny, condition, or continue an uncontested Application. However, Watermaster shall not deny an Application until it has referred the matter to a hearing officer. In the case

of a proposed denial or conditional approval, and upon the request of the Applicant, Watermaster shall schedule an appropriate and timely hearing in general conformity with this Article X.

- (b) An uncontested Application shall be considered at the first regularly scheduled meeting of the Advisory Committee following the expiration of the Contest period.
- (c) The Advisory Committee shall consider the Application, the staff Summary and Analysis and staff report and any rebuttable presumption that may be applicable and make any determinations under the Judgment in accordance with the provisions of section 10.25 herein.
- (d) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration. The Board shall also consider the Application, the staff summary and Analysis and staff report and any rebuttable presumption that may be applicable, as well as the Advisory Committee action consistent with the Judgment. The Board's determination shall be made in accordance with the provisions of section 10.25 herein.
- (e) In each case where Watermaster the Advisory Committee or Board denies or conditions an uncontested Application made by a party to the Judgment, it must support its determination by substantial evidence and act in a manner that is consistent with the Judgment and the Peace Agreement.

10.18 Contested Applications. In each case where a Contest is filed, the matter shall be set for hearing by Watermaster staff in coordination with the hearing officer and the parties to the proceeding.

10.19 Applications by Persons not Parties to the Judgment. In its sole discretion, Watermaster may review, consider, process and decide upon Applications made by persons not parties to the Judgment. However, Watermaster may not approve or conditionally approve such an Application without first holding a hearing in accordance with this Article X.

10.20 Complaints in General. Any party to the Judgment may file a Complaint with Watermaster alleging that the conduct of another person is causing or will cause Material Physical Injury in violation of these Rules and Regulations, the Judgment and the Peace Agreement.

- (a) The Complaint shall identify the name of the Complainant, the specific action or conduct that is causing or will or may cause Material Physical Injury, and any recommended mitigation measures or conditions that might avoid or reduce the alleged Material Physical Injury.
- (b) Upon receipt of the Complaint by Watermaster, it shall prepare a summary of the allegations and serve the summary along with a notice of the Complaint to the parties to the Judgment within 30 (thirty) days from filing.

- (c) Any party to the Judgment may file an Answer to the Complaint within 14 (fourteen) days of the date of the notice of Complaint or other time as may be prescribed in the Watermaster notice of the Complaint.
- (d) Watermaster shall schedule a hearing on the Complaint within 30 (thirty) days of the notice of the Complaint.
- (e) A party to the Judgment's failure to appear or Contest a hearing on the approval of an Application of any matter before Watermaster shall not be a bar to the party's right to file a Complaint as provided herein. However, a party shall not be permitted to file a Complaint if it knew or should have known of a particular harm that that party would suffer and had a reasonable opportunity to object at the time of the original approval process but did not file such a Contest.
- (f) Any party to the Judgment may request an extension of time to file an Answer or to continue the hearing, which may be granted for good cause by Watermaster.
- (g) Any party to a Complaint proceeding that intends to rely upon documentary evidence at the hearing, other than Watermaster documents or files, shall serve copies of the evidence upon Watermaster and the other parties to the proceeding a minimum of seven (7) days in advance of the hearing.
- (h) Watermaster may, in its discretion, cause an investigation of the injury alleged to exist by the pending Complaint. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.

10.21 All Complaints Considered by Pool Committees. All Complaints shall be considered by the Pool Committees. Following consideration by the respective Pool Committees, if the Complaint is not dismissed any person(s) directly impacted by the Complaint may file an Answer in accordance with the provisions of section 10.16 and the Complaint shall be set for hearing.

10.22 Designation of Hearing Officer for Applications, Contests and Complaints. The Watermaster Board shall develop and maintain a panel of five individuals that have technical expertise and some familiarity with the Basin. The hearing officer shall be selected by the mutual agreement of each side. If mutual agreement cannot be reached, each side to any hearing on an Application or Complaint shall rank their preferred hearing officer from one (1) to five (5). The panel member receiving the highest total score shall be selected by the Watermaster Board as the Hearing Officer, unless he or she is unable to serve in which case the panel member receiving the next highest rank shall be selected. Ties shall be broken by vote of the Watermaster Board. Watermaster may add or remove new members to the five member panel from time to time or as circumstances may warrant. There shall be only two sides in any hearing and intervenors shall be assigned to a side.

10.23 Duty of the Hearing Officer. The hearing officer shall conduct the hearings in accordance with the provisions of this Article. It shall be the responsibility of the hearing officer to compile the record, develop proposed findings and recommendations supported by substantial evidence in the record within thirty days of the hearing and transmit the record to the Advisory Committee and thereafter the Watermaster Board for further action. The hearing officer shall have and shall exercise the power to regulate all proceedings in any matter before it, and to take and do all acts and measures necessary or proper for the efficient performance of its duties.

10.24 Procedure at Hearings on Applications, Contests and Complaints

- (a) Parties Recognized at Hearing. Only the Applicant(s), Contestant(s), Watermaster staff and other party or parties to the Judgment which the hearing officer, in its discretion, allows to intervene as Applicant or Contestant, may be allowed to appear at the hearing.
- (b) Appearances. Persons appearing on their own behalf shall identify themselves at the beginning of the hearing. When a person is represented by an agent or attorney, such agent or attorney shall likewise enter an appearance before the hearing officer and thereafter will be recognized as fully controlling the case on behalf of that party to the proceeding.
- (c) Conduct of Hearings. Hearings shall be open to the public. The hearing officer has and shall exercise the power to regulate all proceedings in any manner before it, and to do all acts and take all measures necessary or proper for the efficient performance of its duties. The hearing officer may rule on the admissibility of evidence and may exercise such further and incidental authority as necessary for the conduct of the proceedings.
- (d) Evidence. The hearing need not be conducted according to technical rules of evidence and witnesses. Any relevant, non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions.
- (e) Rebuttable Presumption. A rebuttable presumption under these Rules and Regulations means that the presumption shall be sufficient to approve an Application, unless a party to the Judgment opposing the Application produces substantial evidence to rebut the presumption. Once the party to the Judgment opposing the Application produces substantial evidence in support of their contention that an action may cause Material Physical Injury to a party to the Judgment or the Basin, the presumption shall be deemed rebutted.

- (f) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the Hearing Officer of such facts as may be judicially noticed by the courts of this State.
- (g) Evidence by Reference. Public records of Watermaster which are relevant to the subject of the hearing and books, reports or other papers and pleadings which have been prepared by Watermaster and submitted previously to the Court, may in the discretion of the hearing officer, be received into evidence as exhibits without the need of supplying copies to Watermaster or other parties to the proceeding.
- (h) Examination of Witnesses. Each party to the proceeding shall have the right to call and examine witnesses and introduce exhibits. Watermaster staff and consultants may participate in the hearing as appropriate, using their technical knowledge and experience for the primary purpose of developing a full, fair and accurate record, including the questioning of any witness or the agents for any party to the proceeding
- (i) Order of Procedure. There shall be an opening statement by Watermaster staff, summarizing the subject matter and purpose of the hearing and the procedures to be followed. The designated hearing officer will then ask all persons wishing to participate in the hearing to identify themselves. Staff shall present any written reports, or summary of any findings resulting from an investigation of the Application or the Complaint. The Applicant or the Complainant shall then proceed in the case in chief, followed by the Contestant(s) or the Respondents. The Applicant and the Complainant will then be afforded an opportunity to present any responsive evidence. The hearing officer may allow further response as the interests of justice may require. Questions from the hearing officer or Watermaster staff shall be appropriate at any time.
- (j) Opening Statements and Closing Briefs. Prior to presenting their case, any party to the proceeding may file a written opening statement, or may make an oral opening statement, the length of which may be prescribed by the hearing officer. At the close of the hearing, if the hearing officer deems it advisable, time will be allowed for the filing of written briefs.
- (k) Record. The record of the hearing shall consist of all documents submitted for consideration as well as all testimony presented. Tape recordings of all testimony shall be made. Any party, at that party's sole expense, may have a court reporter present at the hearing.
- (l) Completion of Record. The Hearing Officer may request assistance from Watermaster staff and general counsel in completing the record, proposed findings and recommendations. The Hearing Officer shall transmit his or her proposed findings to the Advisory Committee within thirty days of the close of the hearing.

The proposed findings of the hearing officer shall be based upon substantial evidence in the record.

10.25 Watermaster Determinations.

- (a) Watermaster shall consider and may approve, deny, or condition any contested Application. Prior to rendering a determination on a contested Application or a Complaint, both the Advisory Committee or the Board may also each remand the matter for further findings by the hearing officer a maximum of one time each. The hearing officer shall conduct any additional hearings and complete its review and rehearing and transmit its subsequent report to the Advisory Committee within thirty days from the date of notice from Watermaster of the need for additional findings.
- (b) A contested Application or a Complaint shall be considered at the first regularly scheduled meeting of the Advisory Committee following the transmittal of the record, proposed findings of fact and recommendations by the hearing officer and no later than 30 days from the date of the hearing. The Advisory Committee shall consider the Application, the staff summary and analysis and staff report, any rebuttable presumption, the Contest, Answer, the record, proposed findings of fact and any recommendations of the hearing officer. The Advisory Committee may amend, modify, accept or reject the report of the hearing officer, or it may direct the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument.
  - (i) The findings and decision adopted by the Advisory Committee shall be supported by citations to substantial evidence in the record.
  - (ii) If the Advisory Committee fails to base its decision on substantial evidence in the record or fails to consider the proposed findings of fact developed by the Hearing Officer, subject to the right of the Advisory Committee to remand for further findings, any Advisory Committee mandate shall not be binding on the Watermaster Board. This provision shall not be considered in construing the power of the Watermaster Board or the Advisory Committee that may exist under the Judgment.
- (c) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration within the next thirty (30) days. The Board shall also consider the Application, the staff summary, analysis and staff report, any rebuttable presumption that may be applicable, the Contest, the Answer, the record, the proposed findings of fact and recommendations of the hearing officer, as well as the Advisory Committee action consistent with the Judgment. The Watermaster Board may amend, modify, accept or reject the report of the hearing officer, or it may direct the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument.

If the Board directs the hearing officer to conduct a re-hearing, then the proposed findings of fact and any recommendations shall be transmitted to the Advisory Committee for re-consideration prior to transmittal to the Board.

- (d) Watermaster Action. In acting upon a Complaint, or by approving, denying or conditioning in whole or in part any Application under this Article, the determinations made by the Watermaster Advisory Committee and Board shall be based upon substantial evidence in the record developed by the hearing officer and then before the Advisory Committee and Board. In making such determinations, the Advisory Committee and Board shall act in a manner consistent with the Judgment, the Peace Agreement and these Rules and Regulations. Each shall support its determinations by written findings. Each shall consider all relevant evidence presented and give due consideration to the policies and purposes set forth in the Judgment as well as Article X, section 2 of the Peace Agreement and the OBMP Implementation Plan.
- (e) No Restriction on Rights to Judicial Review Following Determination by Watermaster. Nothing herein shall be construed as imposing any limitation on any party's rights to seek judicial review of a Watermaster decision under this Article pursuant to paragraph 31 of the Judgment once Watermaster has rendered a decision on the respective Application or, in the case of a Complaint, to seek judicial review of a Watermaster decision where a party to the Judgment has elected to pursue Watermaster review of an action under this Article.
- (f) Emergency Review. In the event of a sudden, unforeseen and unexpected emergency impacting the health, safety and welfare of a party to the Judgment or the Basin, the party to the Judgment may seek immediate judicial review in accordance with the provisions of the Judgment and the Local Rules.
- (g) Undue Delay. Absent a Watermaster determination that extraordinary circumstances exist, Watermaster shall render its final decision on any Application filed under this Article within 180 days from the date the Application is deemed complete by Watermaster Staff. In the event Watermaster fails to offer a satisfactory response to repeated requests by a party to the Judgment to approve, deny or condition an Application or to rule on a Complaint, a party to the Judgment may request judicial review of the matter prior to the final Watermaster action.
- (h) Effective Date of Watermaster Action.
  - (i) For purposes of judicial review, any action determination or rule of Watermaster shall be the date on which the decision is filed.
  - (ii) For the purposes of determining the date on which an approved Application pursuant to Article X shall be considered effective, the approval shall relate back to date the completed Application is filed.



10.26 Application, Contests, Complaints Fees and Expenses.

- (a) Each party to the proceeding shall bear its own costs and expenses associated with the proceeding.
- (b) Watermaster's summary and analysis and participation in any hearing under this Article X shall be considered a general Watermaster administrative expense.
- (c) Upon request by the Agricultural Pool, Non-Agricultural Pool, or Appropriative Pool, the parties shall renegotiate this section 10.26. This renegotiation shall consider, but shall not be limited to, the adoption of a Court-approved resolution to address potential costs, fees and procedures incurred by parties to the Judgment and Watermaster in resolving frivolous and repetitiously unsuccessful similar contests.
- (d) Nothing herein shall be construed as precluding the right or claim by any party to the Judgment to request a reviewing Court under paragraph 31 of the Judgment to award litigation fees and costs to the extent such fees and costs may be available under general law.

# EXHIBIT A



## Reset Technical Memorandum

<b>To:</b>	<b>Peter Kavounas, General Manager of the Chino Basin Watermaster</b>
<b>From:</b>	<b>Mark Wildermuth and Andy Malone</b>
<b>Date:</b>	<b>August 10, 2015</b>
<b>Subject:</b>	<b>Methodology to Reset Safe Yield Using Long-Term Average Hydrology and Current and Projected Future Cultural Conditions</b>
<b>Job No.:</b>	<b>007-014-076</b>

The Safe Yield of the Chino Basin is defined within the Judgment as:

The *long-term average* annual quantity of ground water (excluding replenishment or stored water but including return flow to the Basin from use of replenishment or stored water) which can be produced from the Basin under *cultural conditions* of a particular year without causing an undesirable result. (emphasis added)

The “long-term average annual quantity of ground water which can be produced from the Basin” is directly related to the long-term average hydrologic conditions, such as precipitation. The “cultural conditions” refer to the overlying land uses and water-management practices that affect the net recharge to the Basin, including but not limited to, impervious cover, channel lining, land use conversions from agricultural to urban uses, installation and operation of the Chino Desalter well fields, construction of recharge basins and the location and magnitude of groundwater pumping, etc.

The Judgment additionally provides for a Physical Solution to provide maximum flexibility and adaptability in order that Watermaster and the Court may be free to use existing and future technological, social, institutional and economic options, in order to maximize beneficial use of the waters of Chino Basin. (Restated Judgment, ¶ 40).

Subject to these requirements, Watermaster developed an optimum basin management program [OBMP] that both preserved the quantity of the Basin’s waters and maximized their beneficial use. (Restated Judgment, ¶ 41).

Watermaster’s OBMP Implementation Plan called for an initial redetermination of Basin’s Safe Yield in 2010/2011, using monitoring data that would be gathered for the first time during 2000/01 through 2009/10. (OBMP Implementation Plan, pages 44-45

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[Program Element 8 – Develop and Implement Groundwater Storage Management Program, Program Element 9 – Develop and Implement Storage and Recovery Programs]). This requirement is additionally carried forward in Section 6.5 of Watermaster’s Rules and Regulations, which states that the “Safe Yield shall be recalculated in year 2010/11 based upon data from the ten-year period 2000/01 to 2009/10.”

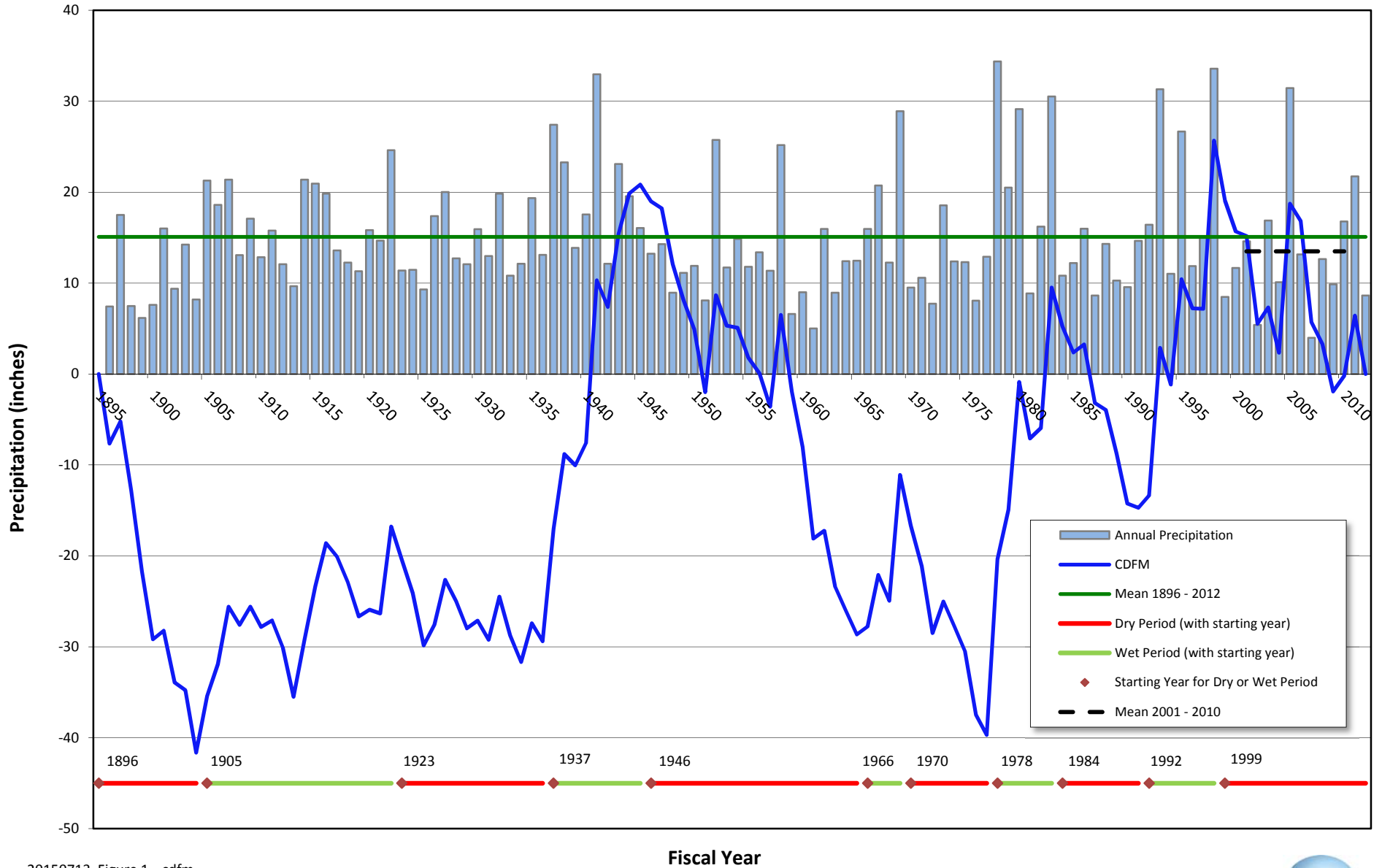
The methodology to redetermine the Safe Yield for 2010/11 and the recommended methodology for future Safe Yield evaluations is listed below. This methodology is consistent with professional custom, standard and practice, and the definition of Safe Yield in the Judgment and the Physical Solution.

1. Use the data collected during 2000/01 to 2009/10 (and in the case of subsequent resets newly collected data) in the re-calibration process for the Watermaster’s groundwater-flow model.
2. Use a long-term historical record of precipitation falling on current and projected future land uses to estimate the long-term average net recharge to the Basin.
3. Describe the current and projected future cultural conditions, including, but not limited to the plans for pumping, stormwater recharge and supplemental-water recharge.
4. With the information generated in [1] through [3] above, use the groundwater-flow model to redetermine the net recharge to the Chino Basin taking into account the then existing current and projected future cultural conditions.
5. Qualitatively evaluate whether the groundwater production at the net recharge rate estimated in [4] above will cause or threaten to cause "undesirable results" or "Material Physical Injury". If groundwater production at net recharge rate estimated in [4] above will cause or threaten to cause "undesirable results" or "Material Physical Injury" then Watermaster will identify and implement prudent measures necessary to mitigate "undesirable results" or "Material Physical Injury", set the value of Safe Yield to ensure there is no "undesirable results" or "Material Physical Injury", or implement a combination of mitigation measures and a changed Safe Yield.



**Figure 1 Annual Precipitation Over the Chino Basin and Cumulative Departure from Mean (CDFM)  
Precipitation**

Based on Monthly Precipitation Estimates from PRISM



# EXHIBIT B

**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)
<b>Re-Operation Water**</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>
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)
<b>Re-Operation Water**</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>	<b>(12,500.000)</b>	<b>(5,000.000)</b>	<b>(5,000.000)</b>	<b>(5,000.000)</b>	<b>(5,000.000)</b>	<b>(5,000.000)</b>
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

# EXHIBIT C



**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
	<b>100.000%</b>	<b>26,161.700</b>	<b>100.000%</b>	<b>8,500.000</b>	<b>1,500.000</b>	<b>10,000.000</b>

**Attachment: Peace II Agreement, Section 6.2 (b)(iii)**

**Allocation of Appropriative Pool Remaining Desalter Replenishment Obligation (RDRO)**

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

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 Paackage 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	(379.499)	0.000	(8.784)	18,018.347	842.427	
Marygold 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	(151.480)	0.000	0.000	(5,371.667)	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	(4,428.101)	(1,855.196)	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)	(2,338.973)	0.000	92.652	105,876.384	6,742.552	

# Exhibit F

*Review heard 11/18*

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FILED - West District  
San Bernardino County Clerk

NOV 18 1999

By *Linda L. Bullock*  
Deputy

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

CHINO BASIN MUNICIPAL  
WATER DISTRICT,  
  
Plaintiff,  
  
vs.  
  
CITY OF CHINO, et al.,  
  
Defendants.

CASE NO. RCV 51010

CEQA RULING

Background

On November 18, 1999, the Chino Basin Watermaster and other parties appeared before the Court regarding the application of the California Environmental Quality Act ("CEQA") to the Chino Basin Optimum Basin Management Program ("OBMP") process. The Watermaster represented that the parties substantially agree that it is necessary to prepare an Environmental Impact Report ("EIR"), and provided a timeline for completion of the report. Monte Vista Water District is the only party appearing that contends CEQA may not apply because of the possible nature of the OBMP and the potential delay that may be caused by the preparation of the EIR.

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Discussion

CEQA applies when an agency approves a "project". A project is an activity that may cause direct or indirect physical environmental change and is an activity undertaken by a public agency, supported by a public agency, or involving the issuance of some form of entitlement or permit. (Pub. Resources Code § 21065; Cal. Code Regs., tit. 14, § 15378). The OBMP is likely to involve numerous public agencies undertaking activities that may cause direct as well as indirect physical environmental harm.

The Chino Basin Watermaster is developing and approving the OBMP, which sets forth a long-term program for Basin management. Because certain programs within the OBMP will necessitate further project-specific CEQA evaluation, such as the desalter program, a Program Environmental Impact Report ("PEIR") has been suggested by the Watermaster. A PEIR is prepared when an activity is composed of a series of actions that are related geographically, a logical part in a chain of contemplated actions, connected as part of a continuing program, carried out under the same authorizing statute or regulatory authority, and have similar environmental impacts that can be mitigated in similar ways. (Cal. Code Regs., tit. 14, § 15168).

Ruling

The Court approves the Watermaster's decision to prepare a PEIR and the Inland Empire Utilities Agency's agreement to serve as the CEQA lead agency. The draft PEIR is scheduled to be completed by February 28, 2000, and the final PEIR is scheduled to be completed by May 17, 2000. Thus, it does not appear that the preparation of the PEIR will cause any delay in the OBMP process.

DATED: November 18, 1999

  
J. MICHAEL GUNN, Judge

# Exhibit G

***PEACE AGREEMENT***

***CHINO BASIN***

***JUNE 29, 2000***

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# PEACE AGREEMENT CHINO BASIN

THIS AGREEMENT (Agreement) is dated the 29th day of June, 2000 regarding the Chino Groundwater Basin.

## RECITALS

**WHEREAS**, disputes have arisen from time to time among and between water users within the Santa Ana River Watershed resulting in a judgment entered in Orange County Superior Court Case No. 117628, Orange County Water District v. City of Chino in 1969; and

**WHEREAS**, a complaint was filed on January 2, 1975, seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution for the Chino Groundwater Basin (hereinafter Chino Basin); and

**WHEREAS**, a Judgment was entered in San Bernardino County Superior Court Case No. 164327 in Chino Basin Municipal Water District v. City of Chino, et al. in 1978, now designated No. RCV 51010 that adjudicated rights to the groundwater and storage capacity within the Chino Basin and established a physical solution; and

**WHEREAS**, the Parties intend that each Producer should be able to Produce both the quantity and quality of water to meet its water supply needs to the greatest extent possible from the water that underlies the Producer's area of benefit; and

**WHEREAS**, the Judgment provides the State of California is the largest owner of land overlying the Chino Basin, and provides that all future Production by the State, or its departments or agencies for overlying use on State-owned lands shall be considered as use by the Agricultural Pool; and

**WHEREAS**, Paragraph 16 of the Judgment authorized the appointment of a Watermaster for a term or terms of five (5) years; and

**WHEREAS**, Watermaster has the express powers and duties as provided in the Judgment or as "hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction" subject to the limitations stated elsewhere in the Judgment; and

**WHEREAS**, Paragraph 41 of the Judgment provides that "Watermaster, with the advice of the Advisory and Pool Committees" has "discretionary powers in order to develop an optimum basin management program (OBMP) for Chino Basin"; and

**WHEREAS**, on February 19, 1998, in San Bernardino County Superior Court Case Number RCV 51010, the Court appointed a "Nine-member Board as Interim Watermaster for a twenty-six month period commencing March 1, 1998 and ending June 30, 2000" and "directed the Interim Watermaster to develop and submit the OBMP"; and

**WHEREAS**, a draft Programmatic Environmental Impact Report (PEIR) for the OBMP has been completed and distributed to the Parties as well as the State Clearinghouse and other interested Parties and the Inland Empire Utilities Agency (IEUA) is serving as "Lead Agency" for purposes of preparing and completing the PEIR as previously directed by the Court on November 18, 1999; and

**WHEREAS**, this Agreement facilitates the implementation of the OBMP which is subject to environmental review under the California Environmental Quality Act (CEQA) as previously directed by the Court; and

**WHEREAS**, disputes have arisen in regard to a number of matters pertaining to the power and authority of the Court and Watermaster under the Judgment, including but not limited to Watermaster power and author-

ity regarding recharge, owning property, holding water rights, water Transfers, storage, yield management, land use conversions, assessments, benefits, procedures and the adoption and implementation of the OBMP; and

**WHEREAS**, OCWD has filed a petition with the State Water Resources Control Board requesting a change of the Santa Ana River's "Fully Appropriated" status, and filed an application to appropriate up to five hundred seven thousand (507,000) acre-feet of such newly declared surplus water; and

**WHEREAS**, the Parties to this Agreement desire to resolve issues by consent under the express terms and conditions stated herein; and

**WHEREAS**, the Parties wish to preserve and maintain Watermaster's role under the Judgment without compromising the Parties' collective and individual "benefits of the bargain" under this Agreement; and

**WHEREAS**, the Parties intend that this Agreement shall enable the adoption and implementation of an OBMP consistent herewith, which will benefit the Basin and all Parties hereto;

**NOW, THEREFORE**, in consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon conditions precedent set forth in Article III, the Watermaster approval and Court Order of its terms, and for other good and valuable consideration, the Parties agree as follows:

## I

### DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. As used in this Agreement, these terms, including any grammatical variations thereof shall have the following meanings:

- (a) "Agricultural Pool" shall have the meaning of Overlying (Agricultural) Pool as used in the Judgment and shall include all its members;
- (b) "Appropriative Pool" shall have the meaning as used in the Judgment and shall include all its members;
- (c) "Basin Water" means groundwater within Chino Basin which is part of the Safe Yield, Operating Safe Yield, or Replenishment Water in the Basin as a result of operations under the physical solution decreed in the Judgment. Basin Water does not include "Stored Water;"
- (d) "Best Efforts" means reasonable diligence and reasonable efforts under the totality of the circumstances. Indifference and inaction do not constitute Best Efforts. Futile action(s) are not required.
- (e) "CBWCD" means the Chino Basin Water Conservation District;
- (f) "CEQA" means the California Environmental Quality Act, Public Resources Code Sections 21000 et seq; 14 California Code of Regulations 15000 et seq.;
- (g) "Chino Basin" or "Basin" means the groundwater basin underlying the area shown on Exhibit "B" to the Judgment and within the boundaries described on Exhibit "K" to the Judgment;
- (h) "Chino Basin Watershed" means the surface drainage area tributary to and overlying Chino Basin;

- (i) “Chino I Desalter” also known as the SAWPA Desalter means the Desalter owned and operated by PC14 with a present capacity of eight (8) million gallons per day (mgd) and in existence on the Effective Date;
- (j) “Chino I Desalter Expansion” means the planned expansion of the Chino I Desalter from its present capacity of eight (8) mgd to a capacity of up to fourteen (14) mgd, to be owned and operated by IEUA and WMWD acting through PC14;
- (k) “Chino II Desalter” means a new Desalter not in existence on the Effective Date with a design capacity of ten (10) mgd, to be owned, constructed, and operated by IEUA and WMWD acting independently or in their complete discretion, acting through the PC14, constructed and operated consistent with the OBMP and to be located on the eastside of the Chino Basin;
- (l) “Court” means the court exercising continuing jurisdiction under the Judgment;
- (m) “Date of Execution” means the first day following the approval and execution of the Agreement by the last Party to do so;
- (n) “Desalter” and “Desalters” means the Chino I Desalter, Chino I Desalter Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin Water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter, Desalter treatment and delivery facilities for the desalted water including pumping and storage facilities, and treatment and disposal capacity in the SARI System;

- (o) “Early Transfer” means the reallocation of Safe Yield not Produced by the Agricultural Pool to the Appropriative Pool on an annual basis rather than according to the five year increment described in Paragraph 10 of Exhibit “H” of the Judgment;
- (p) “Effective Date” means October 1, 2000, provided that all conditions precedent have been waived or satisfied;
- (q) “Future Desalters” means enlargement of the Chino I Desalter to a capacity greater than the Chino I Expansion or enlargement of the Chino II Desalter and any other new Desalter facilities that may be needed to carry out the purposes of the OBMP over the term of this Agreement;
- (r) “General law” means all applicable state and federal law;
- (s) “Groundwater” means water beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table;
- (t) “IEUA” means the Inland Empire Utilities Agency, referred to in the Judgment as Chino Basin Municipal Water District;
- (u) “In-lieu recharge” means taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provided in Exhibit “H” Paragraph 11 of the Judgment;
- (v) “Judgment” means the Judgment dated January 27, 1978, in San Bernardino County Case No. 164327 (redesignated as San Bernardino County Case No. RCV 51010) as amended by Order Approving Amendments to Judgment Dated December 1, 1995, and Order for Amendments to the Judgment Regard-



ing Changes in Pooling Plans and Appropriative Pool Representation on the Advisory Committee, dated September 18, 1996 and other such amendments;

- (w) “Jurupa Community Services District” (JCSD) means the Jurupa Community Services District and the Santa Ana River Water Company individually. Subject to the provisions of this Agreement, the design and delivery obligations for the Chino II Desalter set forth in Section 7.3 regarding Jurupa Community Services District include both the Jurupa Community Services District and the Santa Ana River Water Company. Santa Ana River Water Company may exercise its discretion to receive its portion of the desalted water through an interconnection or at its own expense through an independent pipeline to connect to the Chino II Desalter or in any other method as the Jurupa Community Services District and the Santa Ana River Water Company may jointly agree. Nothing in this definition shall be construed as expanding the initial mgd capacity of the Chino II Desalter as provided in the facilities plan which is attachment “1” to the OBMP Implementation Plan (Exhibit “B” hereto). If it is necessary to meet Santa Ana River Water Company’s demands and there is insufficient initial capacity in the Chino II Desalter to satisfy the demands of Santa Ana River Water Company for desalted water in the quantities as provided in the Revised Draft Water Supply Plan Phase I Desalting Project Facilities Report, Jurupa’s and Ontario’s entitlement to desalted water made available from the initial capacity of the Chino II Desalter shall abate pro-rata to accommodate the demand of Santa Ana River Water Company up to a maximum quantity of 1,300 acre feet per year.
- (x) “Local Storage” means water held in a storage account pursuant to a Local Storage agreement between a party to the

Judgment and Watermaster and consisting of: (i) a Producer's unproduced carry-over water or (ii) a party to the Judgment's Supplemental Water, up to a cumulative maximum of fifty thousand (50,000) acre-feet for all parties to the Judgment.

- (y) "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer, storage and recovery, management, movement or Production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, 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;
- (z) "Metropolitan Water District" means the Metropolitan Water District of Southern California;
- (aa) "New Yield" means proven increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of rising water, capture of available storm flow, operation of the Desalters (including the Chino I Desalter), induced Recharge and other management activities implemented and operational after June 1, 2000;
- (bb) "Non-Agricultural Pool" shall have the meaning as used in the Judgment for the Overlying (Non-Agricultural Pool) and shall include all its members;
- (cc) "OBMP Assessments" means assessments, other than the assessments levied as provided in Section 5.1(g), levied by Watermaster for the purpose of implementing the Optimum

Basin Management Program (OBMP),, which shall be deemed Administrative Assessments under Paragraph 54 of the Judgment.

- (dd) "OCWD" means the Orange County Water District;
- (ee) "Operating Safe Yield" means the annual amount of groundwater which Watermaster shall determine, pursuant to criteria specified in Exhibit "I" to the Judgment, can be Produced from Chino Basin by the Appropriative Pool parties free of Replenishment obligation under the Physical Solution. Watermaster shall include any New Yield in determining Operating Safe Yield;
- (ff) "Overdraft" means a condition wherein the total annual Production from the Basin exceeds the Safe Yield thereof, as provided in the Judgment;
- (gg) "Party or Parties" means a Party to this Agreement;
- (hh) "Party or parties to the Judgment" means a party to the Judgment;
- (ii) "Produce or Produced" means to pump or extract groundwater from the Chino Basin;
- (jj) "Producer" means any person who Produces groundwater from the Chino Basin;
- (kk) "Production" means the annual quantity, stated in acre feet, of water Produced from the Chino Basin;
- (ll) "PC14" means Project Committee No. 14, members of SAWPA, composed of IEUA, WMWD, and OCWD, pursuant

to Section 18 of the SAWPA Joint Exercise of Powers Agreement which now constitutes the executive Authority through which SAWPA acts with respect to the Chino I Desalter;

- (mm) “Public Hearing” means a hearing of Watermaster after notice pursuant to Paragraphs 58 and 59 or other Paragraphs of the Judgment that may be applicable, to all parties to the Judgment and to any other person entitled to notice under the Judgment, this Agreement or general law;
- (nn) “Recharge and Recharge Water” means introduction of water into the Basin, directly or indirectly, through injection, percolation, delivering water for use in-lieu of Production or other method. Recharge references the physical act of introducing water into the Basin. Recharge includes Replenishment Water but not all Recharge is Replenishment Water. This definition shall not be construed to limit or abrogate the authority of CBWCD under general law;
- (oo) “Replenishment Water” means Supplemental Water used to Recharge the Basin pursuant to the physical solution, either directly by percolating or injecting the water into the Basin or indirectly by delivering the water for use in lieu of Production and use of Safe Yield or Operating Safe Yield;
- (pp) “Recycled Wastewater” means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource, referred to as “reclaimed water” in the Judgment.
- (qq) “Safe Yield” means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of

Replenishment or Stored Water) which can be Produced from the Basin under cultural conditions of a particular year without causing an undesirable result;

- (rr) “Salt Credits” means an assignable credit that may be granted by the Regional Water Quality Control Board and computed by Watermaster from activities that result from removal of salt from the Basin, or that result in a decrease in the amount of salt entering the Basin;
- (ss) “SAWPA” means the Santa Ana Watershed Project Authority;
- (tt) “Sphere of Influence” has the same meaning as set forth in Government Code Section 56076;
- (uu) “Storage and Recovery Program” means the use of the available storage capacity of the Basin by any person under the direction and control of Watermaster pursuant to a storage and recovery agreement but excluding “Local Storage”, including the right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment;
- (vv) “Stored Water” means Supplemental Water held in storage, as a result of direct spreading, injection or in-lieu delivery, for subsequent withdrawal and use pursuant to agreement with Watermaster;
- (ww) “Supplemental Water” means water imported to Chino Basin from outside the Chino Basin Watershed and recycled water;
- (xx) “Transfer” means the assignment, lease, or sale of a right to Produce water to another Producer within the Chino Basin or to another person or entity for use outside the Basin in con-

formance with the Judgment, whether the Transfer is of a temporary or permanent nature;

(yy) “TVMWD” means Three Valleys Municipal Water District (referred to in the Judgment as Pomona Valley Municipal Water District);

(zz) “Watermaster” means Watermaster as the term is used in the Judgment;

(aaa) “Watermaster Resolution 88-3” means the resolution by the Chino Basin Watermaster establishing the procedure for transferring unallocated Safe Yield water from the Agricultural Pool to the Appropriative Pool, adopted on April 6, 1988 and rescinding Resolution 84-2 in its entirety;

(bbb) “WMWD” means Western Municipal Water District;

## 1.2 Rules of Construction.

(a) Unless the context clearly requires otherwise:

(i) The plural and singular forms include the other;

(ii) “Shall,” “will,” “must,” and “agrees” are each mandatory;

(iii) “may” is permissive;

(iv) “or” is not exclusive;

(v) “includes” and “including” are not limiting; and

(vi) “between” includes the ends of the identified range.

- (b) Headings at the beginning of Articles, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it.
- (c) The masculine gender shall include the feminine and neuter genders and vice versa.
- (d) The word “person” shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature.
- (e) Reference to any agreement (including this Agreement), document, or instrument means such agreement, document, instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.
- (f) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder.

## II COMPLIANCE WITH CEQA

2.1 Commitments Shall be Consistent With CEQA Compliance. In executing this Agreement, the Parties agree that no commitment will be made to carry out any “project” under the OBMP and within the meaning of CEQA unless and until the environmental review and assessments required by CEQA for that defined “project” have been

completed. Any future implementing actions in furtherance of Program Elements 2 through 9 that meet the definition of “project” under CEQA, shall be subject to further environmental documentation in the form of an exemption, a negative declaration, mitigated negative declaration, environmental impact report, supplemental EIR or subsequent EIR. Any challenge claiming a breach of this article shall be brought within the same period of time applicable to claims under Public Resources Code section 21000, et seq.

- 2.2 Reservation of Discretion. Execution of this Agreement is not intended to commit any Party to undertake a project without compliance with CEQA or to commit the Parties to a course of action, which would result in the present approval of a future project.
- 2.3 No Prejudice by Comment or Failure to Comment. Nothing in the PEIR, or a Party’s failure to object or comment thereon, shall limit any Party’s right to allege that “Material Physical Injury” will result or has resulted from the implementation of the OBMP, the storage, recovery, management, movement or Production of water as provided in Article V herein.
- 2.4 Acknowledgment that IEUA is the Lead Agency. IEUA has been properly designated as the “Lead Agency” for the purposes of preparing the PEIR as ordered by court on November 18, 1999.

### III CONDITIONS PRECEDENT

- 3.1 Performance Under Articles V, VI, and VII is Subject to Satisfaction of Conditions Precedent. Each Party’s obligations under this Agreement are subject to the satisfaction of the following conditions on or before the dates specified below, unless satisfaction of a specified condition or conditions is waived in writing by all other Parties:



- (a) The Parties' covenants and commitments set forth in Article V are expressly conditioned upon Watermaster's contemporaneous approval of this Agreement and the OBMP Implementation Plan by June 29, 2000 and upon an Order of the Court directing Watermaster to proceed in accordance with this Agreement and only this Agreement, on or before July 13, 2000. Watermaster's approval of this Agreement and the OBMP Implementation Plan shall be in the form of a resolution substantially similar to Exhibit "A" attached hereto and it shall contain a commitment to adopt the requisite policies and procedures to implement the provisions set forth in Article V on or before December 31, 2000, unless an earlier date for performance is otherwise expressly provided herein.
  
- (b) Appropriation by the California Legislature of at least \$121,000,000 from the proceeds made available by the passage of Proposition 13 for the benefit of the SAWPA by October 1, 2000.

#### IV MUTUAL COVENANTS

- 4.1 Joint Defense. The Parties shall proceed with reasonable diligence and use Best Efforts to jointly defend any lawsuit or administrative proceeding challenging the legality, validity, or enforceability of any term of this Agreement. However, nothing herein shall require the State of California to incur legal or administrative costs in support of such an effort.
  
- 4.2 No Opposition to the OBMP. No Party to this Agreement shall oppose Watermaster's adoption and implementation of the OBMP as provided in Exhibit B attached hereto in a manner consistent with this Agreement, or the execution of Memoranda of Agreement that incorporate the provisions which are substantially similar to those

contained in Exhibit "C" attached hereto. Nothing herein shall be construed as limiting any Party's right of participation in all the functions of Watermaster as are provided in the Judgment or to preclude a party to the Judgment from seeking judicial review of Watermaster determinations pursuant to the Judgment or as otherwise provided in this Agreement.

4.3 Indemnification of the Agricultural Pool. The Parties shall indemnify and defend the State of California and the members of the Agricultural Pool against any lawsuit or administrative proceedings, without limitation, arising from Watermaster's adoption, approval, management, or implementation of a Storage and Recovery Program.

4.4 Consent to Specified Changes to the Judgment. Each Party consents to the following modifications to the Judgment.

(a) The Judgment shall be amended so that the last sentence of Paragraph 8 of the Judgment reads:

All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom for the term of the Peace Agreement except that the members of the Overlying (Non-Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights within the Overlying (Non-Agricultural) Pool or to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000.

(b) Paragraph 6 of Exhibit "G" to the Judgment regarding the Overlying Non-Agricultural Pool shall be amended to read:

Assignment. Rights herein decreed are appurtenant to that land and are only assignable with the land for over-

lying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) the members of the pool shall have the right to Transfer or lease their quantified Production rights within the pool or to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.

- (c) The 1995 Amendment to the Judgment shall be amended as follows: Section 10(b)(3)(i) shall now read:

“For the term of the Peace Agreement, 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.”

Appendix 1 to the Judgment shall be construed to be consistent with this amendment. All other parts of the 1995 Amendment shall remain the same.

- 4.5 Construction of “Operating Yield” Under the Judgment. Exhibit I to the Judgment shall be construed to authorize Watermaster to include New Yield as a component of Operating Safe Yield.
- 4.6 Best Efforts to Obtain Funding for OBMP. Each Party shall use Best Efforts to obtain and support funding that is consistent with the

OBMP and this Agreement. The Parties shall coordinate their individual efforts and report their progress to Watermaster no less than each quarter beginning on the Effective Date.

- 4.7 CBWCD. Watermaster shall provide for, arrange or approve the necessary revenue to fund Recharge activities listed in the OBMP and CBWCD shall not assume any legal duty or responsibility to conduct Recharge other than as is expressly set forth herein, as it may agree or as may be provided under general law or the Judgment.

## V

### WATERMASTER PERFORMANCE

- 5.1 Recharge and Replenishment. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Recharge and Replenishment:

- (a) All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval.
- (b) Watermaster will ensure that any person may make application to Watermaster to Recharge the Chino Basin with Supplemental Water, including the exercise of the right to offer to sell in-lieu Recharge water to Watermaster as provided in the Judgment and the Agreement in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an application by any party to the Judgment if it is inconsistent with the terms of the Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any Party or the Basin caused by the Recharge of Supplemental Water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and

reasonably mitigated, the request for Recharge of Supplemental Water must be denied.

- (c) Watermaster shall administer, direct and conduct the Recharge of all water in a manner that is consistent with this Agreement, the OBMP and causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that Party.
- (d) Notwithstanding Section 5.1(c), CBWCD shall reserve its complete discretion to Recharge the Basin with water other than Supplemental Water as may be authorized by general law so long as the Recharge is in accordance with the limitations in the Judgment, if any and is in accordance with the provisions of Section 5.1(d)(i)-(v).
  - (i) Upon request by Watermaster CBWCD shall exercise Best Efforts to consult, coordinate and cooperate with Watermaster when recharging water into the Basin;
  - (ii) CBWCD shall provide Watermaster with reasonable notice in advance of any material change in its historic Recharge operations;
  - (iii) CBWCD shall not be required to provide funding for Recharge projects merely by virtue of its execution of this Agreement;
  - (iv) CBWCD shall Recharge the Basin in a manner that does not cause Material Physical Injury to any party to the Judgment or the Basin. Upon Watermaster's receipt of a written allegation that an existing or proposed

CBWCD Recharge activity has or will cause Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing within a reasonable time. Watermaster shall provide notice and opportunity to be heard to interested parties to the Judgment including CBWCD. After hearing, Watermaster may approve, deny or condition the CBWCD's Recharge. Watermaster's decision shall be based upon the record and it shall be subject to the court's review;

- (v) CBWCD's Recharge of the Basin coupled with an intent to store and recover water shall require a storage and recovery agreement.
- (e) Watermaster shall exercise its Best Efforts to:
- (i) protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge;
  - (ii) ensure there is sufficient Recharge capacity for Recharge Water to meet the goals of the OBMP and the future water supply needs within the Chino Basin;
  - (iii) direct Recharge relative to Production in each area and sub-area of the Basin to achieve long term balance and to promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin;
  - (iv) evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in storage or water rights which is proposed in place of

physical Recharge of water to Chino Basin in accordance with the provisions of Section 5.3;

- (v) establish and periodically update criteria for the use of water from different sources for Replenishment purposes;
  - (vi) ensure a proper accounting of all sources of Recharge to the Chino Basin;
  - (vii) Recharge the Chino Basin with water in any area where groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin;
  - (viii) maintain long-term hydrologic balance between total Recharge and discharge within all areas and sub-areas;
  - (ix) coordinate, facilitate and arrange for the construction of the works and facilities necessary to implement the quantities of Recharge identified in the OBMP Implementation Plan.
- (f) Watermaster shall undertake Recharge, using water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water.
- (g) In furtherance of its obligations under this Section, for a period of five years, commencing with Fiscal Year 2000-2001, and within each such Fiscal Year Watermaster shall arrange for the physical Recharge of Supplemental Water in the amount of an annual average of 6,500 acre-feet per year in one or more of

the areas commonly known as the Montclair, Brooks and Upland spreading facilities.

- (i) If for any reason at the end of the five year period, a cumulative total of 32,500 acre-feet of physical Recharge has not been accomplished under this subdivision, then Recharge shall continue at the above referenced locations at the average annual rate of 6,500 acre-feet until the full 32,500 acre-feet of physical Recharge has been accomplished;
  - (ii) The Recharged Supplemental Water shall increase the Operating Safe Yield under the Judgment. The cost and allocation of this Supplemental Water under this Section 5.1g shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's share of the initial Safe Yield;
  - (iii) The need to continue physical Recharge under this paragraph shall be evaluated by Watermaster after the conclusion of Fiscal Year 2004-2005. In evaluating further physical Recharge pursuant to this paragraph, Watermaster shall take into account the provisions of this Article, the Judgment and the OBMP among all other relevant factors. Except as to Watermaster's determination of Material Physical Injury, the rights of each party to the Judgment to purchase or lease water to meet its over-Production obligation shall be unaffected by this provision;
- (h) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. It shall never own real property. However, Watermaster may own water rights in trust for the benefit of the



parties to the Judgment. Moreover, Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and this Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any.

- (i) CBWCD's rights and obligations to obtain Replenishment Water are unaffected by the execution of this Agreement. Its obligation, rights and duties regarding Recharge may be set by arms length negotiation through separate agreement or as they otherwise exist under general law and the Judgment.
- (j) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge.

5.2 Storage and Recovery. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding the storage and recovery of water:

- (a) In General.
  - (i) All storage capacity shall be subject to regulation and control by Watermaster;
  - (ii) No person shall store water in and recover water from the Chino Basin without an agreement with Watermaster;
  - (iii) Watermaster will ensure that any person, including but not limited to the State of California and the Department

of Water Resources may make application to Watermaster to store and recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an application to store and recover water if it is inconsistent with the terms of this Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any Party or the Basin caused by the storage and recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and recovery must be denied.

- (iv) This Agreement shall not be construed to limit the State or its department or agencies from using available storage capacity in the Basin in accordance with the provisions of this Section under a storage and recovery agreement with Watermaster.

(b) Local Storage.

- (i) For a period of five years from the Effective Date, Watermaster shall ensure that: (a) the quantity of water actually held in Local Storage under a storage agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its un-Produced carry-over water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of carry-over water and Supplemental Water held in its storage account, subject only to the loss provisions set forth in this Section 5.2. This means a party to the Judgment may increase the total volume of carry-over water it holds in Local Storage up to five years after the

Effective Date and as Watermaster may approve pursuant to a Local Storage agreement for Supplemental Water.

- (ii) For a period of five years from the Effective Date, any party to the Judgment may make application to Watermaster for a Local Storage agreement, whereby it may store Supplemental Water in the Chino Basin.
- (iii) Watermaster shall provide reasonable advance written notice to all interested parties of the proposed Local Storage agreement, prior to approving the agreement. The notice shall include the persons engaged in the Local Storage, the location of the Recharge and Production facilities and the potential for any Material Physical Injury, if any.
- (iv) Watermaster shall approve the Local Storage agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then existing Local Storage agreements for all parties to the Judgment does not exceed the cumulative total of 50,000 acre-feet; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing the Supplemental Water into Local Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury.
- (v) There shall be a rebuttable presumption that the Local Storage agreement for Supplemental Water does not

result in Material Physical Injury to a party to the Judgment or the Basin.

- (vi) In the event any party to the Judgment, or Watermaster, objects to a proposed Local Storage agreement for Supplemental Water and submits evidence that there may be a Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing and allow the objecting party to the Judgment a reasonable opportunity to be heard.
- (vii) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other information Watermaster shall reasonably request. Watermaster shall not grant any person the right to store more than the then existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental Water from the cumulative maximum of 50,000 acre-feet.
- (viii) Watermaster shall base any decision to approve or disapprove any proposed agreement upon the record.

- (ix) Any party to the Judgment may seek judicial review of Watermaster's decision.
- (x) Five years after the Effective Date, Watermaster shall have discretion to place reasonable limits on the further accrual of carry-over and Supplemental Water in Local Storage. However, Watermaster shall not limit the accrual of carry-over Local Storage for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing carry-over storage pursuant to *Lease of Corporate Shares Coupled with Irrevocable Proxy, dated July 1, 1993 between Cucamonga County Water District and Fontana Water Resources Inc. and the Settlement Agreement Among Fontana Union Water Company, Kaiser Steel Reserves Inc., San Gabriel Valley Water Company and Cucamonga County Water Districts dated February 7, 1992*, to a quantity less than 25,000 acre-feet for the term of this Agreement.
- (xi) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and Section 5.2(c) below;
- (xii) Watermaster shall set the annual rate of loss from Local Storage for parties to the Judgment at zero until 2005. Thereafter the rate of loss from Local Storage for parties to the Judgment will be 2% until recalculated based upon the best available scientific information. Losses

shall be deducted annually from each party to the Judgment's storage account;

(xiii) Watermaster shall allow water held in storage to be transferred pursuant to the provisions of Section 5.3 below. Storage capacity is not transferable by any party to the Judgment or any Party hereto.

(c) Storage and Recovery Program.

(i) Watermaster will ensure that no person shall store water in and recover water from the Basin, other than pursuant to a Local Storage agreement, without a storage and recovery agreement with Watermaster;

(ii) Watermaster shall prepare a list of basic information that a proposed applicant for a Storage and Recovery Program must submit to Watermaster prior to the execution of a storage and recovery agreement;

(iii) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons.

(iv) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.

(a) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts;

- (b) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits;
- (v) For the term of this Agreement, members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively “compensation”) as directed by the Non-Agricultural and the Appropriative Pools;
- (vi) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to off-set the Watermaster’s cost of operation, to reduce assessments on the parties to the Judgment within the Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool;
- (xiii) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval;
- (ix) Watermaster reserves discretion to negotiate appropriate terms and conditions or to refuse to enter into a Storage

and Recovery or to deny any request. However, with respect to persons not parties to the Judgment, Watermaster reserves complete discretion. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program upon the record. However, it may not approve a proposed Storage and Recovery Program unless it has first imposed conditions to reasonably and fully mitigate any threatened or potential Material Physical Injury;

- (x) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program.
  
- (d) The specific terms and conditions for the use of the facilities of CBWCD in connection with Local Storage or Storage and Recovery Programs shall be covered under separate agreements reached by arms length bargaining between Watermaster and CBWCD. Watermaster and any other Party shall not be entitled to the income received by CBWCD for use of its facilities in connection with Local Storage or Storage and Recovery Programs without the consent of CBWCD. Nothing in this Agreement shall be construed as preventing CBWCD from entering into an agreement with others for use of its facilities in a manner consistent with Section 5.1(d) i-v of this Agreement.
  
- (e) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a storage and recovery agreement.
  
- (f) Watermaster shall exercise Best Efforts to undertake the following measures:



- (i) Complete the Short-term conjunctive use project, authorized by Watermaster and conducted by IEUA, TVMWD and MWD;
- (ii) Evaluate and develop a seasonal peaking program for in-Basin use and dry year yield to reduce the Basin's demand on the Metropolitan Water District for imported water;
- (iii) Evaluate and develop a dry year export program;
- (iv) Evaluate and develop a seasonal peaking export program;

5.3 Transfers. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding the Transfer of water:

- (a) Watermaster will ensure that any party to the Judgment may Transfer water in a manner that is consistent with this Agreement, the OBMP and the law. Watermaster shall not approve a Transfer if it is inconsistent with the terms of the Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Transfer of water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Transfer must be denied.
- (b) A party to the Judgment may make application to Watermaster to Transfer water as provided in the Judgment.

- (i) Watermaster shall provide reasonable advance written notice to all the parties to the Judgment of a proposed Transfer, prior to approving the Transfer. The notice shall include the persons engaged in the Transfer, the location of the Production and Watermaster's analysis of the potential for Material Physical Injury, if any;
- (ii) Watermaster shall approve the Transfer of water as provided in the Judgment so long as the individual Transfer does not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed Transfer with conditions that fully and reasonably mitigate any threatened or potential Material Physical Injury;
- (iii) There shall be a rebuttable presumption that the Transfer and the Production by the transferee does not result in Material Physical Injury to a party to the Judgment or the Basin;
- (iv) In the event any party to the Judgment, or Watermaster, objects to a proposed Transfer and submits evidence that there may be Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing and allow the objecting party to the Judgment a reasonable opportunity to be heard;
- (v) Watermaster shall base any decision to approve or disapprove any proposed Transfer upon the record after considering potential impacts associated with the individual Transfer alone and without regard to impacts attributable to any other Transfers;

- (vi) Any party to the Judgment may seek judicial review of the Watermaster's decision.
- (c) Watermaster shall allow Producers to lease water rights to make up for the lessee's over-Production.
- (d) Except as provided in Section 5.2, Producers shall not be required to file a storage and recovery or recapture plan except when Producing water transferred from a storage account.
- (e) Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of paragraph (b) above. The right to Transfer within the pool includes the right to lease water to other members of the Non-Agricultural Overlying Pool. In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.
- (f) Consistent with the provisions of 88-3, Watermaster shall approve the Transfer of unallocated Safe Yield under-Produced by the Agricultural Pool in Fiscal Year 1998-99, for Transfer to the Appropriative Pool in Fiscal Year 1999-2000, 35,262.452 acre-feet consistent with Watermaster Resolution 88-3. This Transfer shall be in addition to the Early Transfer of the 32,800 acre-feet per year from the Agricultural Pool to the Appropriative Pool referenced below in 5.3(g).
- (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. The quantity of water sub-

ject to Early Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (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(i) 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;
- (v) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool.

- (h) The amount of water rights converted for agricultural land to urban use is presently 2.6 acre-feet per acre, with 1.3 acre-feet per acre being allocated collectively to all members of the Appropriative Pool with an initial share of Safe Yield and 1.3 acre-feet per acre being allocated to that appropriator providing service for that urban use. The rate of 2.6 acre-feet per acre shall be changed to a total of 2.0 acre-feet per acre, all of which shall be allocated upon the conversion of the land to that party to the Judgment which is an a member of the Appropriative Pool, on the Effective Date of this Agreement, and whose Sphere of Influence or authorized service area contains the land (purveyor). Upon such conversion of water rights, the purveyor will pledge that amount of water needed for such urban land use, when such urban land use is established, up to 2 acre-feet of water per acre of land per year will be made available for service for such converted land by purveyor under its then-existing standard laws, regulations, rules and policies, or for service arranged by such purveyor, subject only to prohibition of such service by a federal, state agency or court with jurisdiction to enforce such prohibition. The owner of such converted land shall have the right to enforce such pledge by specific performance or writ of mandate under the terms of this Agreement. No monetary damages shall be awarded.
- (i) The members of the Agricultural Pool, including the State of California, shall have the right to engage in a voluntary agreement with an appropriator which has a service area contiguous to or inclusive of the agricultural land, to provide the required water to the overlying land on behalf of the member of the Agricultural Pool unless otherwise prohibited by general law. The appropriator providing service shall be entitled to a credit to off-set Production to the extent it is serving the overlying land up to the amount of the historical maximum annual quantity of water previously used on the property.

5.4 Assessments, Credits, and Reimbursements. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Assessments.

- (a) During the term of this Agreement, all assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriate Pool. This includes but is not limited to OBMP Assessments, assessments pursuant to Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative Expenses and Special Project Expenses, 55, and Exhibit F (Overlying Agricultural Pool Pooling Plan) of the Judgment except however in the event the total Agricultural Pool Production exceeds 414,000 acre-feet in any five consecutive year period as defined in the Judgment, the Agricultural Pool shall be responsible for its Replenishment obligation pursuant to Paragraph 45 of the Judgment.
- (b) The City of Pomona (Pomona) shall be allowed a credit of up to \$2 (two) million against OBMP Assessments for its installation and operation and maintenance of its existing anion exchange project, which is hereby determined to further the purposes of the OBMP. Pomona's construction and operation of its anion exchange project was not legally compelled and Pomona had no legal duty to construct the project. For the 30 (thirty) year initial Term of this Agreement, Pomona's OBMP Assessment shall be credited \$66,667 per year, not to exceed Pomona's total BMP Assessment attributable to the project's Production for that year. Extension of the Term of this Agreement shall not extend the period of credit.
- (c) Kaiser Ventures (Kaiser) in recognition of its contribution of 25,000 acre-feet to offset Replenishment obligations for the

Desalters shall be allowed a credit of up to \$900,000 (nine hundred thousand dollars) against OBMP Assessments for the Desalters and related facilities. For the 30 (thirty) year initial Term of this Agreement, Kaiser's OBMP Assessment shall be credited up to \$30,000 (thirty thousand dollars) per year, not to exceed Kaiser's OBMP Assessment attributable to Desalters and related facilities. Extension of the Term of this Agreement shall not extend the period of credit. In the event Kaiser Transfers its water rights appurtenant to its overlying land which it owns on the date of execution, the purchaser (Kaiser's successor in interest) shall be entitled one-half (1/2) of the annual credit.

- (d) Watermaster shall adopt reasonable procedures to evaluate requests for OBMP credits against future OBMP Assessments or for reimbursement. Any Producer or party to the Judgment, including but not limited to the State of California, may make application to Watermaster for reimbursement or credit against future OBMP Assessments for any capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating ground-water Production facilities, that carries out the purposes of the OBMP including but not limited to those facilities relating to the prevention of subsidence in the Basin, in advance of construction or that is prospectively dedicated to service of the stated goals of the OBMP. Watermaster shall exercise reasonable discretion in making its determination, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future BMP Assessments under this section where the

Producer or party to the Judgment was otherwise legally compelled to make the improvement.

- (e) Any Producer that Watermaster compels to move a groundwater Production facility that is in existence on the Date of Execution shall have the right to receive a credit against future Watermaster assessments or reimbursement up to the reasonable cost of the replacement groundwater Production facility.
- (f) The procurement of Replenishment Water and the levy of assessments shall be consistent with the provisions of Section 5.4(a) above.

5.5 Salt Credits. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Salt Credits. Watermaster shall assign to the members of the Appropriative Pool, salt credits under the OBMP other than those that were previously allocated for the existing Chino I Desalter, or are attributable to a project or program undertaken by the State of California for the benefit of its overlying land and that carry out the purposes of the OBMP.

5.6 Metering. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding metering:

- (a) With respect to the obligation to install meters, which is set forth in the Judgment Paragraph 21, any Assessment levied by Watermaster on the members of the Agricultural Pool, regarding metering shall be paid by the Appropriative Pool. Members of the Agricultural Pool, shall have no obligation to install meters hereafter. The obligation to install meters on wells



owned or operated by members of the Agricultural Pool, shall become that of the Watermaster.

- (b) Agricultural Pool meters shall be installed within thirty-six months of the Date of Execution. Watermaster shall be responsible for providing the meter, as well as the cost of any installation, maintenance, inspection, testing and repairing. The members of the Agricultural Pool, shall provide reasonable access during business hours to a location reasonably appropriate for installation, inspection, and repairing of a meter.
- (c) The State of California reserves its right to continue to install, operate, maintain, inspect, test and repair its own meters on wells owned or operated by the State, unless it consents to installation by Watermaster in which case Watermaster assumes the cost.

## VI COVENANTS BY THE MEMBERS OF THE AGRICULTURAL POOL

- 6.1 Best Efforts to Support Storage and Recovery. The members and representatives of the Agricultural Pool shall exercise Best Efforts to support the development of any Storage and Recovery Project, once it has been approved by Watermaster, so long as there is no Material Physical Injury to a member of the Agricultural Pool or the Basin.
- 6.2 Covenant of Good Faith and Fair Dealing. The members and representatives of the Agricultural Pool, including the State of California in its capacity as a member and owner of overlying land within the Agricultural Pool, shall be bound by the covenant of good faith and fair dealing, and not oppose or undermine the efforts of Watermaster to secure the development of a Storage and Recovery Program, so

long as there is no potential or threatened Material Physical Injury to a member of the Agricultural Pool or the Basin.

- 6.3 Waiver of Compensation. For the term of this Agreement, the members and representatives of the Agricultural Pool shall waive any claims or rights they might raise or possess, and shall not be entitled, to any compensation from a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (compensation). Further, the members of the Appropriative Pool and the Non-Agricultural Overlying Pool shall have the exclusive rights to any such compensation. This Section shall not apply to the charges adopted by CBWCD for storage and recovery purposes. This paragraph shall not be construed as a limitation on the ability of the State of California to make application to the Watermaster for a Storage and Recovery Program pursuant to Section 5.2.

## VII DESALTERS

- 7.1 Need for Desalters. The OBMP requires construction and operation of Desalters. The Desalters shall be owned, operated and maintained by IEUA and WMWD acting independently or in their complete discretion, acting through PC14 consistent with the terms of this Agreement.
- 7.2 Ownership and Operation.
- (a) Chino I Desalter.
    - (i) The existing “Chino I Desalter,” also known as the “SAWPA Desalter,” consisting of extraction wells, transmission facilities for delivery of groundwater to the Chino I Desalter, Desalter treatment and delivery facil-

ities for product water, including pumping and storage facilities, and treatment and disposal capacity in the SARI System, is owned and operated by SAWPA, which has created “The Project Committee No. 14 (PC14)” comprised of SAWPA members, IEUA, WMWD, and OCWD, pursuant to “Project Agreement No. 14” dated April 2, 1991, to exercise all the powers and responsibilities of Section 18 of the SAWPA Joint Exercise of Powers Agreement, which now constitutes the executive authority through which SAWPA acts with respect to the Chino I Desalter and to fund repayment for any loans for construction and operation and maintenance of such Desalter and a “Financing Agreement” dated April 1, 2000.

- (ii) The Chino I Desalter is operated pursuant to (a) “take or pay” agreements with the purchasers of water made available from such Desalter; (b) an agreement with the Metropolitan Water District (MWD) subsidizing that Desalter to reduce the cost of the water made available by that Desalter compared to the alternative cost of uninterruptible treated imported water available from MWD; and (c) an agreement with the Watermaster, all Pools of Producers from the Chino Basin, Kaiser Ventures, Inc., formerly known as Kaiser Resources, Inc. (Kaiser) and the California Regional Water Quality Control Board, Santa Ana Region (RWQB), regarding provision of certain water with which to satisfy the Replenishment obligation for operating the Desalter.

- (b) Chino II Desalter and Chino I Expansion.

IEUA and WMWD acting independently or in their complete discretion through PC14 must own and operate the Chino II

Desalter and the Chino I Expansion in the same manner as the Chino I Desalter, except as otherwise provided in this Agreement.

(c) Future Desalters.

IEUA and WMWD acting independently or in their complete discretion through PC14 must own and operate Future Desalters, if and only if, they can secure funding from state, federal or sources other than the Parties to pay the capital costs required to construct Future Desalters.

7.3 Design and Construction of Chino II Desalter, Chino I Expansion and Future Desalters.

- (a) IEUA and WMWD acting independently or in their complete discretion, acting through PC14 shall design and construct the Chino II Desalter on the eastside of the Chino Basin and expand the capacity of the Chino I Desalter already in existence on the Date of Execution, from 8 mgd up to 14 million gallons per day.
- (b) The Chino II Desalter shall have an initial capacity of 10 mgd and shall be designed to deliver water to Jurupa Community Services District, the City of Ontario, and if requested, others subject to the limitations of available funding. The existing capacity of the Chino I Desalter shall be expanded by a minimum of 2 mgd and up to 6 mgd, depending on the rate of development and availability of funding and shall be designed to deliver water to the Cities of Chino, Chino Hills and the State of California as provided in this Section.

- (c) There is no minimum initial capacity established for Future Desalters as the size and timing of Future Desalters are dependent upon variables not presently subject to reliable estimates.
  - (i) It is contemplated by the Parties that Future Desalters, and a further expansion of the Chino I Desalter to a capacity greater than the Chino I Expansion or the Chino II Desalter to a capacity greater than 10 mgd may occur;
  - (ii) IEUA and WMWD shall design and construct Future Desalters, whether acting independently, or in their complete discretion, through PC14, provided that their obligation shall be conditioned upon their ability to secure funding from the state or federal sources other than the Parties to pay the capital costs of construction. Absent such funding, the IEUA and WMWD, acting independently or, in their complete discretion, acting through PC14, shall have no obligation to construct Future Desalters;
- (d) The specific location of wells to supply the Chino II Desalter and Future Desalters shall be determined with Watermaster approval and shall be in a location, which is consistent with and shall carry out the purpose of the OBMP. The design and construction of the Chino II Desalter, Chino I Expansion, and Future Desalters shall be in accordance with the OBMP and subject to Watermaster approval. Watermaster approval shall not be unreasonably withheld and shall insure that the operation of the Desalters will implement the OBMP and not result in Material Physical Injury to any party to the Judgment or the Basin.
- (e) Wells operated in connection with the Desalters shall be designed and constructed to Produce water with high total

dissolved solids (TDS) and be located in areas consistent with the purposes of the OBMP.

#### 7.4 Funding.

- (a) The capital costs of the Chino I Desalter are not affected by this Agreement.
- (b) The capital costs of designing and constructing the Chino II Desalter and the Chino I Desalter Expansion shall be partially derived from Proposition 13 funds. The Parties shall exercise their Best Efforts to secure said funds from the appropriate state agencies. However, all unmet capital, operation and maintenance costs relative to the Chino II Desalter shall be paid from the following sources and in the following order of priority:
  - (i) The net amount of funding received by SAWPA from its existing preliminary gross allocation of \$87,000,000 from the \$235,000,000 Proposition 13 bond funding provided for the Santa Ana River Watershed sub-account, which currently includes \$20,000,000-30,000,000 earmarked for the Chino II Desalter and \$5,000,000 for the Chino I Desalter Expansion;
  - (ii) All other eligible Proposition 13 bond funding;
  - (iii) All other available federal, state or SAWPA funding;
  - (iv) MWD subsidies or other funding without committing the storage space of the Chino Basin under any storage and recovery or conjunctive use agreement, such as that secured pursuant to Agreement Number 7658, between MWD, SAWPA, IEUA, WMWD and OCWD dated

December 7, 1995, and entitled “Chino Basin Desalination Program, Phase I, Joint Participation Agreement for Recovery and Utilization of Contaminated Groundwater;”

- (v) Revenue derived from the sale of water made available from the Desalters; and
  - (vi) Any additional revenue arranged by IEUA and WMWD acting independently or in their complete discretion, acting through PC14, pursuant to an agreement substantially similar to or an amendment of the SAWPA PC14 Agreement entered into on or about April 2, 1991.
- (c) IEUA’s and WMWD’s obligation to construct Future Desalters whether acting independently, or in their complete discretion, through PC14, shall be conditioned upon their ability to secure state or federal funding to pay for the capital costs related to such construction. Absent such state and/or federal funding, the IEUA and WMWD, acting independently or, in their complete discretion, acting through PC14, shall have no obligation to construct Future Desalters.
- (i) If, after the earlier of ten years, or the conversion of 20,000 acres of agricultural land, Watermaster, in its discretion, determines that Future Desalters are necessary to implement the OBMP, IEUA or WMWD, acting independently or in their complete discretion acting through PC14, shall have a period up to thirty-six (36) months to secure sufficient funding from State or Federal sources to pay for all the capital costs required to construct “Future Desalters;”

- (ii) If IEUA and WMWD acting independently or, in their complete discretion, acting through PC14 cannot secure the necessary funding, the Parties, other than the Agricultural Pool, will exercise their Best Efforts to negotiate new terms and conditions so as to accomplish the implementation of this portion of the OBMP;
- (iii) If, however, the Parties, other than the Agricultural Pool, are unable to negotiate new terms to this Agreement within twenty-four (24) months from the initiation of negotiations, the Parties may appoint a mutually agreed upon mediator. Failing an agreement, the Parties reserve all legal rights and remedies, provided that the Agricultural Pool shall not be liable for the costs of the Future Desalters. The remainder of this Agreement shall remain in full force and effect.

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

- (a) Watermaster Desalter Replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser pursuant to the "Salt Offset Agreement" dated October 21, 1993, between Kaiser and the RWQB, and other water previously dedicated by the Appropriative Pool.
- (b) New Yield of the Basin, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted water to offset the price of desalted water to the extent of the dedication;
- (c) Safe Yield of the Basin, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted



water to offset the price of desalted water to the extent of the dedication;

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

## 7.6 Sale of Water.

- (a) The terms and conditions for the purchase and sale of water from the Chino I Desalter shall be as provided by separate agreement.
- (b) The terms and conditions for the purchase and sale of desalted water from the Chino II Desalter and Chino I Expansion are as follows.
  - (i) Members of the Appropriative Pool and the State of California shall have the first priority right to purchase desalted water developed by Chino II and Chino I Expansion on an equal basis, pursuant to a water supply contract, which is not a “take or pay” contract but contains a minimum annual quantity of water available to be purchased and is consistent with the provisions of this Agreement.
  - (ii) OCWD shall have the second priority right to purchase desalted water from the Chino II Desalter and the Chino I Expansion provided that IEUA and WMWD have elected to act through PC14.
  - (iii) If the members of the Appropriative pool, the State of California and the OCWD do not contract for the delivery of all desalted water made available by Chino

II Desalter and the Chino I Expansion, other persons may purchase the water.

- (c) The terms and conditions for the purchase and sale of desalted water from Future Desalters are contingent upon IEUA and WMWD acting independently or, in their complete discretion, acting through PC14, securing sufficient funding to pay the capital costs of transporting the desalted water from the Chino II Desalter and Chino I Expansion to other parties to the Judgment that are members of the Appropriative Pool and that desire to purchase desalted water. If sufficient funding is acquired, then other parties to the Judgment that are members of the Appropriative Pool shall have the right to purchase desalted water under the terms and conditions provided in this Article.
- (d) The price of desalted water to the parties to the Judgment that are members of the Appropriative Pool, the State of California and OCWD when purchasing water pursuant to Section 7.6(b)2 above, shall be the actual cost of providing the water but shall not exceed \$375.00 per acre foot, as adjusted by the purchase and sale agreement between IEUA, WMWD, PC14 and the purchasing party, but in no event shall such adjustment exceed the annual consumer's price index for the LA/Anaheim/Riverside Area or the percent increase in the MWD treated water rates, or its equivalent, whichever is less as measured from the Effective Date.
- (i) If a party to the Judgment elects to Produce water for the Chino II Desalter, the Chino I Expansion or Future Desalters they shall be entitled to a credit against the purchase price in an amount equivalent to the cost of alternative Replenishment Water then available from MWD as interruptible, untreated water or the then pre-

vailing value of the avoided Replenishment obligation, whichever is less;

- (ii) If the purchaser is a person other than a party to the Judgment, the price shall be no less than the cost of the alternative water supplies with comparable reliability and quality or if no purchasers are identified then at the highest price that may be attained under the circumstances;
  - (iii) Fifty percent of any annual revenues received by the Project 14 Committee in excess of the actual ongoing operation, maintenance and Replenishment expenses which revenues are derived from sales of water to any person not a Producer under the Judgment, or the OCWD, shall be provided to Watermaster for use as an off-set against any future assessments against the Parties by Watermaster.
- (e) The term of such Water Supply Contract shall be not less than 30 years if requested by a Party to this Agreement.

## VIII TERM

- 8.1 Commencement. This Agreement shall become effective on the Effective Date and shall expire on the Termination Date.
- 8.2 Expiration. Unless extended pursuant to paragraph 8.3, this Agreement shall expire and thereupon terminate on December 31 of the thirtieth (30th) calendar year starting on January 1, of the first calendar year following the Effective Date.

8.3 Meet and Confer. The Parties agree to meet and confer during the 25th year of this Agreement to discuss any new or modified terms which may be requested or required by each Party in order to continue the term of this Agreement. However, no Party shall be required to modify or amend a term of this Agreement as a precondition to exercising their right to one thirty (30) year extension as provided in 8.4 below.

8.4 Independent Right to Extend. The term of this Agreement may be extended for a period of an additional thirty (30) years, upon the unilateral election of either the Appropriative or Agricultural Pool, (as a Pool only and not the individual members of either Pool) acting in accordance with Watermaster procedures under the Judgment, prior to the end of the twenty-fifth (25<sup>th</sup>) year. The election shall be made in writing with a copy to be sent to the Watermaster and all Parties to this Agreement. In the event an election is made to continue this Agreement, the Agreement shall continue for the extended term on the same terms and conditions as existed during the first thirty (30) years of the Agreement.

8.5 Force Majeure.

- (a) If the performance, in whole or in part, of the obligations of the respective Parties is prevented by act or failure to act of any agency other than a Party to this Agreement, court or any other person, by natural disaster or catastrophic event (such as earthquake, fire, drought or flood), contamination, war, strikes, lockouts, acts of God, or acts of civil or military authority, by the operation of applicable law, or by any other cause beyond the control of the affected Party or Parties, whether similar to the causes specified herein or not, the obligation of the affected Party or Parties to perform an act or actions under this Agreement shall be suspended from the time and to the extent that the performance thereof is prevented, but reasonable diligence

shall be observed by the affected Party or Parties, so far as it lies in their power, in performing such respective obligations in whole or in part under this Agreement.

(b) In the event performance is prevented as described above, the Parties agree actively to cooperate and use their Best Efforts to resume performance.

8.6 Only One Mandatory Extension. In no event shall a Party be required to extend performance under this Agreement beyond the first two terms of this Agreement, irrespective of the existence of force majeure. Any further extensions under this Agreement shall be consensual among the Parties to such an agreement.

8.7 Effect of Termination. Upon termination of this Agreement further performance by the Parties under the Agreement shall be excused. Performance under the Agreement shall not be the cause of any action or claim other than as expressly provided herein. Other than as provided in paragraph 8.8, upon termination of this Agreement, the legal rights, remedies, responsibilities and authorities of all Parties regarding the Judgment, interpretation of the Judgment and the powers and authority of Watermaster or the Court, in existence on the Date of Execution, whatever they may be, are expressly reserved and shall be as they existed on the Date of Execution, provided that such rights and remedies shall not be a basis to challenge a Party's performance under this Agreement.

8.8 Rescission of Resolutions 84-2 and 88-3. Upon termination of this Agreement, the members of the Appropriative Pool shall have no obligation to pay the Watermaster Assessments for the members of the Agricultural Pool. The provisions of Resolution 84-2 and 88-3 shall be rescinded and except as provided for in Section V above,

pertaining to “Early Transfers” of Safe Yield during the term of this Agreement, the members of the Appropriative Pool shall not be entitled to further Early Transfers of water from the Agricultural Pool. Upon the termination of this Agreement, the Parties agree that no further Early Transfers of unallocated Safe Yield shall occur. The determination of the Safe Yield as provided for in the Judgment at Paragraph 44 shall be construed to mean that the Appropriative Pool shall receive no Transfers of unallocated Safe Yield from the Agricultural Pool for a period of five (5) consecutive years after the termination of this Agreement, at which time the Appropriative Pool shall receive the difference between 414,000 acre-feet allocated to the Agricultural Pool and the actual water used by the Agricultural Pool for the first five consecutive calendar years immediately following the termination of this Agreement.

- 8.9 Mediation Upon Failure to Secure Capital Funding for Future Desalters. If IEUA or WMWD have not acquired the funding within thirty-six (36) months of the date of the Watermaster determination regarding the need for the Future Desalters as provided in Article VII, then the members of the Appropriative Pool, Non-Agricultural Pool and IEUA and WMWD will exercise Best Efforts to negotiate new terms and conditions for the capital costs for any such Future Desalters.
- 8.10 Parties Rights Unaffected Upon Termination. Each Party’s rights shall be unaffected by their having approved, executed or implemented this Agreement pursuant to their mutual consent other than as provided in Section 8.8.

## IX CONFLICTS

9.1 Events Constituting a Default by a Party. Each of the following constitutes a "default" by a Party under this Agreement.

- (a) A Party fails to perform or observe any term, covenant, or undertaking in this Agreement that it is to perform or observe and such failure continues for ninety (90) days from a Notice of Default being sent in the manner prescribed in Section 10.13.

9.2 Remedies Upon Default. In the event of a default, each Party shall have the following rights and remedies:

- (a) Specific Performance. Each Party agrees and recognizes that the rights and obligations set forth in this Agreement are unique and of such a nature as to be inherently difficult or impossible to value with money. If one Party does not perform in accordance with the specific wording of any of the provisions in this Agreement applicable to that Party, defaults, or otherwise breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to protect the unique rights and interests of the other Party to the Agreement. Accordingly, in any court controversy concerning this Agreement, the Agreement's provisions will be enforceable in a court of equity by specific performance. This specific performance remedy is not exclusive and is in addition to any other remedy available to the Parties to enforce the terms of this Agreement.
- (b) Injunction. Each Party agrees and recognizes that the rights and obligations set forth in this Agreement are material to another Party and of such a nature that there will be substantial

reliance upon the terms of this Agreement. If one Party does not perform in accordance with specific wording of any of the provisions of this Agreement applicable to that Party, defaults, or otherwise breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to prevent substantial and irreparable harm to another Party to the Agreement. Accordingly, in any court controversy concerning this Agreement, the Agreement's provisions will be enforceable in a court of equity by mandatory and prohibitory injunction. This mandatory and prohibitory injunction remedy is not exclusive and is in addition to any other remedy available to the Parties to enforce the terms of this Agreement.

- (c) Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any right or remedy, the non-breaching Party does not thereby waive that right or remedy. Furthermore, no single or partial exercise of any right, power, or privilege precludes any further exercise of a right, power, or privilege granted by this Agreement or otherwise.
  
- (d) Attorneys' Fees. In any adversarial proceedings between the Parties other than the dispute resolution procedure set forth below and under the Judgment, the prevailing Party shall be entitled to recover their costs, including reasonable attorneys' fees. If there is no clear prevailing Party, the Court shall determine the prevailing Party and provide for the award of costs and reasonable attorneys' fees. In considering the reasonableness of either Party's request for attorneys' fees as a prevailing Party, the Court shall consider the quality, efficiency, and



value of the legal services and similar/prevaling rate for comparable legal services in the local community.

### 9.3 Dispute Resolution.

- (a) Scope of Dispute Resolution. Disputes (Disputes) between the Parties other than those constituting a “Default”, or “Exclusion” (defined below), shall be resolved pursuant to the provisions of this Section.
- (b) Exclusions:
  - (i) Emergency. An emergency event which, if not promptly resolved may result in imminent danger to the public health, safety or welfare shall not be subject to dispute resolution.
  - (ii) Complete Discretion. Those matters reserved to the complete discretion of a Party under this Agreement shall not be subject to dispute resolution.
  - (iii) Review Under the Judgment Unaffected. The rights and remedies of the parties to the Judgment to seek review of Watermaster actions shall not be subject to dispute resolution.
- (c) Disputes.
  - (i) Each Party to this Agreement may submit any Dispute related to or arising under this Agreement to non-binding mediation by delivering a Notice of Dispute to the other Party;

- (ii) The written Notice of Dispute prepared by the Party shall be delivered to the other Party in accordance with Section 10.13. The Notice of Dispute shall clearly describe the basis of the dispute and the Sections of the Agreement under which the Dispute arises;
- (iii) The non-binding mediation shall be conducted by Judicial Arbitration Mediation Services (JAMS) or an equivalent mediation service agreed to by the Parties;
- (iv) Unless otherwise agreed, a mediator shall be appointed within forty-five (45) days of the date the Notice of Dispute is delivered to hear the dispute and provide a written determination. The mediator shall be chosen jointly by the Parties. If the Parties cannot agree, the Court shall appoint the mediator. Employees or agents of Watermaster or any Party are ineligible to serve as the mediator;
- (v) The mediation shall be held within ninety (90) days of the date the Notice of Dispute is delivered;
- (vi) Any statute of limitations applicable to any claims, rights, causes of action, suits, or liabilities of whatever kind or nature, in law, equity or otherwise, whether known or unknown, shall be tolled during the mediation process. For purposes of this Section, the mediation process shall commence upon the service of a Notice of Dispute to the other Party pursuant to Section 9.3c(i) above. For purposes of this Section, the mediation process shall be deemed complete ten (10) days after service of the mediator's written notice of the conclusion of the mediation;

**X**  
**GENERAL PROVISIONS**

- 10.1 Supersedence. Upon execution of this Agreement, any and all existing agreements or contracts between the Parties concerning the precise subject matter of this Agreement are hereby rescinded to the extent that they conflict with express terms herein.
- 10.2 Applicability to Others.
- (a) After the Date of Execution, each Party agrees that any other agreement or contract relating to the subject matter of this Agreement, or the Judgment, to which it is a party, shall be consistent with the provisions of this Agreement, unless all other Parties consent to the inconsistent agreement or contract.
  - (b) After the Date of Execution, each Party reserves complete discretion to enter into other agreements or contracts on subject matter not covered by the terms of this Agreement.
- 10.3 Admissions by Parties. Nothing in this Agreement constitutes an admission of liability by any Party hereto for any prior or past acts that preceded the Date of Execution. This Agreement and any documents prepared in connection herewith may not be used as evidence in any litigation, except as necessary to interpret or enforce the terms of this Agreement.
- 10.4 Construction of Agreement. Each Party, with the assistance of competent legal counsel, has participated in the drafting of this Agreement and any ambiguity should not be construed for or against any Party on account of such drafting.

- 10.5 Each Party Bears Own Costs. Each Party is to bear its own costs, expenses, and attorneys' fees arising out of or in connection with the subject matter of this Agreement and the negotiation, drafting, and execution of this Agreement. Each of the Parties understands that this Agreement includes all claims for loss, expense and attorneys' fees, taxable or otherwise, incurred by it or arising out of any matters leading up to the execution of this Agreement.
- 10.6 Waiver of Breach. No waiver or indulgence of any breach or series of breaches of this Agreement shall be deemed or construed as a waiver of any other breach of the same or any other provision hereof or affect the enforceability of any part or all of this Agreement. No waiver shall be valid unless executed in writing by the waiving Party.
- 10.7 Awareness of Contents/Legal Effect. The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The Parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.
- 10.8 Agreement Binding On All. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties, and each of their respective agents, employees, directors, officers, attorneys, representatives, principals, shareholders, sureties, parents, subsidiaries, affiliates, successors, predecessors, assigns, trustees or receivers appointed to administer their assets, and attorneys of any and all such individuals and entities. All the covenants contained in this Agreement are for the express benefit of each and all such persons described in this Section. This Agreement is not intended to benefit any third parties.

- 10.9 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all Parties do not appear on the same page.
- 10.10 Captions. The captions contained herein are included solely for convenience and shall not be construed as part of this Agreement or as full or accurate descriptions of the terms hereof.
- 10.11 Choice of Law. This Agreement shall be construed and enforced pursuant to the laws of the State of California.
- 10.12 Authority to Enter into This Agreement. Each Party represents and warrants that its respective obligations herein are legal and binding obligations of such Party; that each Party is fully authorized to enter into this Agreement, and that the person signing this Agreement hereinafter for each Party has been duly authorized to sign this Agreement on behalf of said Party.
- 10.13 Notice.
- (a) Any notice required under this Agreement shall be written and shall be served either by personal delivery, mail or fax.
  - (b) In the case of service by personal delivery or fax, no additional time, in days, shall be added to the time in which a right may be exercised or an act may be done.
  - (c) In the case of service by mail, notice must be deposited in a post office, mailbox, sub post-office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the representative(s) of the Party

on whom it is to be served, at their place of business. The service is complete at the time of deposit. Any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by mail shall be extended five days. Any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by Express mail or other method of delivery providing for overnight delivery shall be extended by two court days.

10.14 Amendments and/or Changes to Agreement.

- (a) Any amendments and/or changes to this Agreement must be in writing, signed by a duly authorized representative of the Parties hereto, and must expressly state the mutual intent of the Parties to amend this Agreement as set forth herein. The Parties to this Agreement recognize that the terms and conditions of this Agreement, which are set forth herein in the Sections preceding this Section have been arrived at through the collective negotiations by the Parties.
- (b) The Parties hereby agree that no amendments and/or changes may be made to this Agreement without the express written approval of each Party to this Agreement, provided that upon request, no such approval shall be unreasonably withheld.

**XI**

**ACKNOWLEDGMENTS:  
CONFIRMATION OF RIGHTS**

- 11.1 Each Party's rights to water it presently holds in storage with Watermaster are confirmed and protected.

11.2 The Parties confirm that in addition to the benefits received by the State under this Agreement, including an exemption from the payment of Watermaster Assessments as a member of the Agricultural Pool, the rights of the State of California under the Judgment to Produce water are not modified or altered by this Agreement. For all purposes of the Judgment all future Production by the State or its departments or agencies, including but not limited to the Department of Corrections, Department of Fish and Game, Youth Authority, Department of Parks and Recreation, Department of Toxic Substances Control, and Department of Transportation as set forth in Paragraph 10 of the Judgment, for overlying use on State-owned lands, shall be considered use by the Agricultural Pool. This Agreement is not intended to limit the State or its departments or agencies including but not limited to, the Department of Corrections, Department of Fish and Game, Youth Authority, Department of Parks and Recreation, Department of Toxic Substances Control, and Department of Transportation from exercising the State's rights of future Production for overlying use on State-owned lands as set forth in Paragraph 10 of the Judgment. The Parties agree that they will not oppose the State's exercise of its rights pursuant to the Judgment. The State of California is not executing this Agreement on behalf of the State Water Resources Control Board, the Department of Water Resources, Department of Toxic Substances Control, or the California Regional Water Quality Control Board or the Department of Fish and Game except as stated above. Nothing in this Agreement shall be construed in any way as modifying, altering or limiting the regulatory and trustee obligations, legal rights or duties of any State Agencies, including the Department of Fish and Game, the State Water Resources Control, the California Regional Water Quality Control Boards, the Department of Toxic Substances Control and Department of Water Resources. This Agreement does not limit in any way, and expressly recognizes the rights and ability of the Department of Water Resources to make application to

Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

7/31/00

CITY OF ONTARIO

By 

DATED:

CITY OF POMONA

By \_\_\_\_\_

DATED:

CITY OF UPLAND

By \_\_\_\_\_

[Signatures continued on following pages]



Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

CITY OF ONTARIO

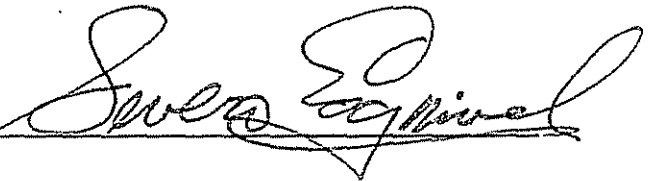
By \_\_\_\_\_

DATED:

CITY OF POMONA

7-31-2000

By \_\_\_\_\_



A handwritten signature in cursive script, appearing to read "Steven Espinal", written over a horizontal line.

DATED:

CITY OF UPLAND

By \_\_\_\_\_

[Signatures continued on following pages]

Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED: CITY OF ONTARIO

By \_\_\_\_\_

DATED: CITY OF POMONA

By \_\_\_\_\_

DATED: 7/24/00 CITY OF UPLAND

By Robert R. Kalar

[Signatures continued on following pages]

DATED: 8/1/00

STATE OF CALIFORNIA

By Maulyn H. Levin

DATED:

CITY OF CHINO

By \_\_\_\_\_

DATED:

07/31/00

CUCAMONGA COUNTY  
WATER DISTRICT

By James M. Wilson

DATED:

MONTE VISTA WATER  
DISTRICT

By \_\_\_\_\_

DATED: 7-27-2000

FONTANA UNION WATER  
COMPANY

By Ronald J. Black

[Signatures continued on following pages]

DATED:

STATE OF CALIFORNIA

By \_\_\_\_\_

DATED:

CITY OF CHINO

By *Ernie M. Wilcox*

DATED:

CUCAMONGA COUNTY  
WATER DISTRICT

By \_\_\_\_\_

DATED:

MONTE VISTA WATER  
DISTRICT

By \_\_\_\_\_

DATED:

FONTANA UNION WATER  
COMPANY

By \_\_\_\_\_

[Signatures continued on following pages]

DATED:

STATE OF CALIFORNIA

By \_\_\_\_\_

DATED:

CITY OF CHINO

By \_\_\_\_\_

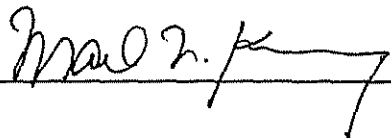
DATED:

CUCAMONGA COUNTY  
WATER DISTRICT

By \_\_\_\_\_

DATED: 7/31/00

MONTE VISTA WATER  
DISTRICT

By 

DATED:

FONTANA UNION WATER  
COMPANY

By \_\_\_\_\_

[Signatures continued on following pages]

DATED:

CITY OF CHINO HILLS

By \_\_\_\_\_

DATED:

JURUPA COMMUNITY SERVICES DISTRICT

By *[Signature]*

DATED:

AGRICULTURAL POOL

By *[Signature]*

DATED:

APPROPRIATIVE POOL

By \_\_\_\_\_

DATED: 7/27/00

NON-AGRICULTURAL POOL

By *[Signature]*

[Signatures continued on following pages]

DATED: 7/31/00

CITY OF CHINO HILLS

By [Signature]

DATED:

JURUPA COMMUNITY SERVICES DISTRICT

By \_\_\_\_\_

DATED:

AGRICULTURAL POOL

By \_\_\_\_\_

DATED:

APPROPRIATIVE POOL

By [Signature]

DATED:

NON-AGRICULTURAL POOL

By \_\_\_\_\_

[Signatures continued on following pages]

DATED:

July 31, 2000

INLAND EMPIRE UTILITY  
AGENCY

By John L. Anderson

DATED:

THREE VALLEYS  
MUNICIPAL WATER  
DISTRICT

By \_\_\_\_\_

DATED:

KAISER VENTURES, INC.

By \_\_\_\_\_

DATED:

WESTERN MUNICIPAL  
WATER DISTRICT

By \_\_\_\_\_

[Signatures continued on following pages]



DATED:

INLAND EMPIRE UTILITY  
AGENCY

By \_\_\_\_\_

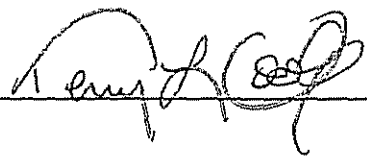
DATED:

THREE VALLEYS  
MUNICIPAL WATER  
DISTRICT

By \_\_\_\_\_

DATED: 7/31-00

KAISER VENTURES, INC.

By  \_\_\_\_\_

DATED:

WESTERN MUNICIPAL  
WATER DISTRICT

By \_\_\_\_\_

[Signatures continued on following pages]

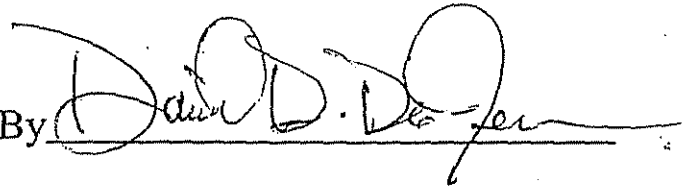
DATED:

**INLAND EMPIRE UTILITY  
AGENCY**

By \_\_\_\_\_

DATED:

**THREE VALLEYS  
MUNICIPAL WATER  
DISTRICT**

By  \_\_\_\_\_

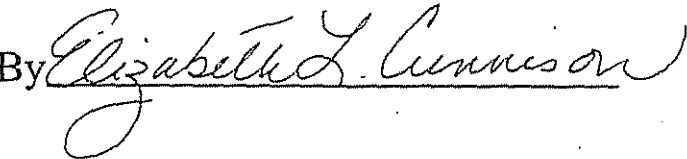
DATED:

**KAISER VENTURES, INC.**

By \_\_\_\_\_

DATED:

**WESTERN MUNICIPAL  
WATER DISTRICT**

By  \_\_\_\_\_

[Signatures continued on following pages]

DATED: 7/31/00

SAN ANTONIO WATER  
COMPANY

By Tom Thomas

DATED:

CHINO BASIN WATER  
CONSERVATION DISTRICT

By \_\_\_\_\_

DATED:

[Signatures continued on following pages]

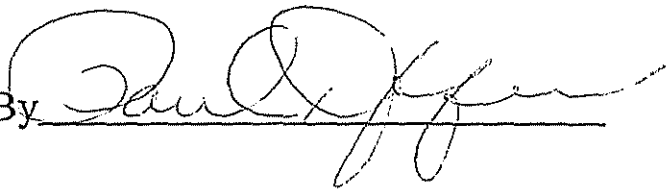
DATED:

**SAN ANTONIO WATER  
COMPANY**

By \_\_\_\_\_

DATED: 7/28/2000

**CHINO BASIN WATER  
CONSERVATION DISTRICT**

By  \_\_\_\_\_

DATED:

[Signatures continued on following pages]

# EXHIBIT A

WATERMASTER RESOLUTION

NO. 2000-\_\_

**RESOLUTION OF THE CHINO BASIN WATERMASTER TO ADOPT THE GOALS AND PLANS OF THE PHASE I REPORT AS IMPLEMENTED BY THE OBMP IMPLEMENTATION PLAN, CONSISTENT WITH THE PEACE AGREEMENT AS ITS OBMP ("OBMP"), TO ADOPT THE REQUISITE POLICIES AND PROCEDURES TO IMPLEMENT THE PROVISIONS SET FORTH IN ARTICLE V OF THE PEACE AGREEMENT ON OR BEFORE DECEMBER 31, 2000, AND TO APPROVE THE "PEACE AGREEMENT."**

WHEREAS, the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court No. 164327, created the Watermaster and directed it to perform the duties as provided in the Judgment or ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction; and

WHEREAS, the Judgment directs Watermaster to develop an OBMP subject to the limitations contained in the Judgment; and

WHEREAS, Watermaster and prepared and submitted a Phase I Report regarding the OBMP to the Court; and

WHEREAS, the Court ordered the Inland Empire Utilities Agency (IEUA) to act as "lead agency" for the purposes of preparing any applicable environmental review for the OBMP in the form of a Programmatic Environmental Impact Report (PEIR) and the Court is exercising continuing jurisdiction over this matter; and

WHEREAS, the parties developed a Memorandum of Principles which articulated a framework of an agreement which the Watermaster Board

articulated a framework of an agreement which the Watermaster Board unanimously approved on May 26, 2000; and

WHEREAS, the parties have reduced the principles into a more definitive agreement and an OBMP Implementation Plan.

WHEREAS, the goals and plans in the Phase I Report implemented consistent with the OBMP Implementation Plan and the Peace Agreement constitute the OBMP; and

WHEREAS, the IEUA has prepared and circulated a draft PEIR and held a public meeting to take public comment on the OBMP on June 28, 2000; and

WHEREAS, the parties to the Peace Agreement and the parties to the Judgment have requested Watermaster to approve the Peace Agreement and the OBMP Implementation Plan and to implement the goals and plans contained in the OBMP Phase I Report in a manner consistent with the Peace Agreement and the OBMP Implementation Plan.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND DETERMINED THAT:

1. The goals and plans in the Phase I Report and their implementation as provided in and consistent with the Implementation Plan and the Peace Agreement are in furtherance of the physical solution set forth in the Judgment and Article X, Section 2 of the California Constitution.

2. Although not a signatory, the Chino Basin Watermaster Board supports and approves the Peace Agreement negotiated by the parties thereto.
3. Subject to the satisfaction of all conditions precedent set forth in the Peace Agreement and the unanimous approval of the Peace Agreement by the Parties thereto no later than August 1, 2000:
  - a. Watermaster adopts the goals and plans of the Phase I Report consistent with the Implementation Plan and the Peace Agreement.
  - b. The Watermaster will proceed in accordance with the OBMP Implementation Plan and the Peace Agreement.
  - c. Watermaster will comply with the conditions described in Article V of the Peace Agreement labeled, "Watermaster Performance" and Watermaster shall adopt all necessary policies and procedures in order to implement the provisions set forth in Article V on or before December 31, 2000, unless an earlier date is specified in the Peace Agreement or the OBMP Implementation Plan.
4. The Watermaster Board will transmit a request to the Court to issue an Order authorizing and directing Watermaster to proceed in accordance with this Resolution.
5. In approving this Agreement, Watermaster is not committing to carry-out any project within the meaning of CEQA unless and until environmental review and assessments required by CEQA



for that defined "project" have been completed. Any future actions that meet the definition of a "project" under CEQA shall be subject to environmental documentation.

# **EXHIBIT B**

**IMPLEMENTATION PLAN**  
**OPTIMUM BASIN MANAGEMENT PROGRAM**  
**FOR THE**  
**CHINO BASIN**

**INTRODUCTION**

This document describes the implementation plan for the Chino Basin Optimum Basin Management Program (OBMP). The goals and objectives for the OBMP are described in Section 3 of the Phase 1 OBMP report dated August 1999. Nine program elements were developed during the OBMP Phase 1 process to meet the goals of the OBMP. The program elements described herein include:

- Program Element 1 – Develop and Implement Comprehensive Monitoring Program
- Program Element 2 – Develop and Implement Comprehensive Recharge Program
- Program Element 3 – Develop and Implement Water Supply Plan for the Impaired Areas of the Basin
- Program Element 4 – Develop and Implement Comprehensive Groundwater Management Plan for Management Zone 1
- Program Element 5 – Develop and Implement Regional Supplemental Water Program
- Program Element 6 – Develop and Implement Cooperative Programs with the Regional Water Quality Control Board, Santa Ana Region (Regional Board) and Other Agencies to Improve Basin Management
- Program Element 7 – Develop and Implement Salt Management Program
- Program Element 8 – Develop and Implement Groundwater Storage Management Program
- Program Element 9 – Develop and Implement Storage and Recovery Programs

The scope of the program elements was developed by the Chino Basin stakeholders. Each program element contains a series of comprehensive actions and plans to implement those actions. Some of the program elements have been combined because they overlap and have synergies between them.

The parties to the PEACE Agreement (Peace Agreement) dated June 29, 2000, support and consent to Watermaster proceeding with this Implementation Plan in a manner that is consistent with the Peace Agreement and the Judgment. It is the intention of the parties that this Implementation Plan be interpreted consistently with the Peace Agreement and that all terms in this Implementation Plan be interpreted consistently with like terms contained in the Peace Agreement. To the extent there is a conflict between the Peace Agreement and this Implementation plan, the Peace Agreement shall Control.

#### Program Element 1 – Develop and Implement Comprehensive Monitoring Program

##### A. Groundwater Level Monitoring Program

**Description.** Watermaster began a process to develop a comprehensive groundwater level monitoring program in the spring of 1998. The process consists of two parts – an initial survey followed by long-term monitoring at a set of key wells. The initial survey consists of collecting groundwater level data at all wells in the Basin from which groundwater level measurements can be obtained for fall 1999, spring 2000, fall 2000, spring 2001, and fall 2001. Watermaster staff expects that they will measure groundwater levels in the initial survey at about 400 wells in the overlying agricultural pool and about 100 other wells from the other pools and unassigned monitoring wells. The data from the initial survey will be mapped and reviewed.

Based on this review and Watermaster management needs, a long-term monitoring program will be developed after the fall of 2001 survey. The long-term monitoring program will use about half of the wells in the overlying agricultural pool used in the initial survey plus all wells in the other pools and unassigned wells monitored under the direction of the Regional Board and others. Key wells located in agricultural areas will be replaced as necessary if the original well is destroyed when the agricultural land surrounding the well is converted to other use.

Watermaster will develop a groundwater level measurement protocol for use by all cooperating entities. Groundwater levels will be obtained by the following entities:

- Overlying Agricultural Pool – Watermaster staff
- Overlying Non-agricultural Pool – pool member or Watermaster staff
- Appropriative Pool – pool member or Watermaster staff
- Other wells – Watermaster staff will obtain data from Regional Board or owners.

**Implementation Status.** Watermaster began implementation of a groundwater level monitoring program in Watermaster fiscal year 1999/00, the current fiscal year, with a budget commitment of approximately \$61,000. Additionally, Watermaster began an intensive monitoring effort in the immediate area of the Chino I Desalters. Watermaster is monitoring this area to collect data to analyze the effects of the Desalters pumping. There will be a comparable or greater level of effort and budget commitment through 2001/02. After 2001/02, the budget commitment will be less when it reflects the implementation of a key-well monitoring program.

## **B. Groundwater Quality Monitoring Program**

**Description.** Watermaster began the process to develop a comprehensive water quality monitoring program in July 1999. As with the groundwater level monitoring program, the water quality monitoring program will consist of an initial survey and a long-term monitoring effort. The initial survey will consist of:

- collection of all water quality data from appropriators' or non-agricultural pool members' wells that are tested by appropriators or non-agricultural pool members;
- collection of all water quality data from the Regional Board for water quality monitoring efforts that are conducted under their supervision; and
- collection and analysis of at least one water quality sample at all (or a representative set of) other production wells in the Basin. Assumed maxi-

imum number of wells to be sampled by Watermaster in the initial survey is 600.

Groundwater quality samples will be obtained by the following entities:

- Overlying Agricultural Pool – Watermaster staff
- Overlying Non-Agricultural Pool – pool member
- Appropriative Pool – pool member
- Other wells – Watermaster staff will obtain data from Regional Board or owners

Re-sampling and analysis will be done at wells sampled by Watermaster if volatile organic compounds (VOCs) are detected. These data will be mapped and reviewed. Based on this review and Watermaster management goals in the OBMP, a long-term monitoring program will be developed and implemented in the fall of 2002. The long-term monitoring program will contain a minimum set of key wells that can be periodically monitored to assess water quality conditions in the Basin over time.

**Implementation Status.** Watermaster began implementation of a groundwater quality monitoring program in fiscal year 1999/00 with a budget commitment of about \$250,000 and will commit the same or greater level of effort through 2001/02. After 2001/02, the budget commitment will be less reflecting the implementation of a key well monitoring program.

### **C. Production Monitoring Program**

**Description.** The wells that Produce more than 10 acre-ft/yr in the Agricultural Pool will have in-line totalizing flow meters or other metering devices from which Watermaster will be able to estimate groundwater production in the Basin as provided in Article V of the Peace Agreement. To accomplish this, agricultural wells will be equipped with in-line totalizing flow meters or other suitable metering devices in each case in which it is prudent and feasible to do so.. Production records from wells owned by appropriators and overlying non-agricultural pool members will be reported quarterly as has been done in the past. Watermaster staff will monitor the meters of wells owned by agricultural pool members at least once a year during the

period of mid-May through June, if necessary. Watermaster staff will digitize all production records in Watermaster's database and use this information in the administration of the Judgment.

In addition to the above, all Producers will provide Watermaster on an annual basis with a *water use and disposal survey* form that describes the sources of water used by each Producer and how that water is disposed of after use. The purpose of the form is to provide information to Watermaster that will enable accurate salt budget estimates as described in *Program Element 6 – Develop and Implement Cooperative Programs with the Regional Board and Other Agencies to Improve Basin Management*, and for other water resources management investigations that may be undertaken by Watermaster in the future as part of implementing the OBMP.

Groundwater production estimates and water use and disposal survey forms will be obtained by the following entities:

- Overlying Agricultural Pool – Watermaster meters. Pool members read meters and will prepare and submit water use and disposal survey forms
- Overlying Non-Agricultural Pool – pool members will read their meters and prepare and submit the water use and disposal survey forms
- Appropriative Pool – pool members will read their meters and prepare and submit the water use and disposal survey forms.

**Implementation Status.** Watermaster developed and began implementation of a more comprehensive production monitoring program for the overlying agricultural pool in fiscal year 1999/00. The meter installation program will take place over a three-year period starting in fiscal year 2000/01 with a budget commitment of \$200,000 not including staff and contract meter installation. The water use and disposal forms are in development in the current fiscal year and will be used in subsequent years starting in 2000/01.

**D. Surface Water Discharge and Quality Monitoring**

**Description.** Currently, water quality is measured at all existing recharge and retention basins that contribute or have the potential to contribute significant recharge to the Basin. Water level sensors will be installed in those recharge and retention basins that contribute significant recharge to the Chino Basin. These facilities are listed in Table 4-3 of the OBMP Phase 1 Report. New water level sensors may be required at a cost of \$200,000. Water level data acquisition and water quality sampling will be done by Watermaster staff. The annual cost of laboratory analysis and interpretation of water level/discharge and water quality data is estimated to be as high as \$45,000.

Watermaster needs to assess the existing surface water discharge and associated water quality monitoring programs for the Santa Ana River and its Chino Basin tributaries to determine the adequacy of the existing monitoring programs for characterizing historical ambient conditions and their utility in detecting water quality impacts from future Chino Basin management activities. If possible, Watermaster will exercise best efforts to contract with the agencies conducting these programs to modify their programs to accommodate Watermaster.

**Implementation Status.** Watermaster will take the lead in completing the following activities:

- Watermaster will exercise best efforts to install water level sensors in those existing recharge and retention facilities that have conservation storage and potential for storm water recharge. This activity will begin in Watermaster fiscal year 2000/01.
- Watermaster staff will obtain grab samples approximately every two weeks for all basins during the rainy season and have these samples analyzed. This activity has been occurring since 1997/98, is budgeted in the current fiscal year, and will continue in the future at some level reflecting the water resources management goals of Watermaster. Current fiscal year budget is \$38,250. In addition, Watermaster staff will supplement its storm water quality data by obtaining information from other agencies that are required to collect such data.



- In the current fiscal year, Watermaster will review the surface water discharge and associated water quality monitoring programs for the Santa Ana River and the lower Chino Basin tributaries, and compare what is available from these programs to what is needed for Watermaster investigations under the OBMP. A supplementary /cooperative monitoring program will be developed based on this review and will be implemented by Watermaster during fiscal year 2000/01. The cost of the initial assessment of surface water data for the Santa Ana River is estimated to be \$15,000.

#### **E. Ground Level Monitoring Program**

**Description.** Watermaster is interested in determining if and how much subsidence has occurred in the Basin. Watermaster will conduct an analysis of historical ground level surveys and remote sensing data to make this determination. The analysis consists of the following tasks:

- Historical survey data collected and/or on file by federal, state, and local agencies will be compiled, mapped, and reviewed to estimate total subsidence for as long a period as possible.
- Synthetic aperture radar (SAR) imagery was obtained by the City of Chino as part of its own subsidence investigations and was provided to Watermaster for its review and use. Watermaster converted this to maps to estimate recent subsidence (1993 to 1999) in the Management Zone 1.
- Based on the above information, a network of ground elevation stations in subsidence-prone areas will be developed and periodic surveys of these stations will be done. The frequency of periodic surveys will be established for the Basin as a whole with more frequent surveys done for some areas of the Basin. The estimated cost of this effort is not certain.
- Watermaster will summarize and distribute the ground level monitoring data through the normal Watermaster process.

**Implementation Status.** Watermaster has budgeted about \$36,000 for the above tasks in the fiscal year 2000/01. These tasks will be accomplished in the

current fiscal year. Watermaster will budget for additional ground level surveys in subsequent years based on the results of the current year efforts.

#### **F. Well Construction, Abandonment and Destruction Monitoring**

**Description.** Watermaster maintains a database on wells in the Basin and Watermaster staff makes periodic well inspections. Watermaster staff sometimes finds a new well during routine well inspections. The near-term frequency of inspection is expected to increase due to the groundwater level, quality and production monitoring programs. Watermaster needs to know when new wells are constructed as part of its administration of the Judgment. Valuable information for use in managing the Chino Basin is usually developed when wells are constructed including: well design, lithologic and geophysical logs, groundwater level and quality data, and aquifer stress test data. Producers generally notify Watermaster when they construct a new well but seldom, if ever, provide the information listed above. Watermaster has not generally asked for these data. Well owners must obtain permits from the appropriate county and state agencies to drill a well and to put the well in use. Watermaster is developing cooperative agreements with the counties of Los Angeles, Orange, Riverside, and San Bernardino, and the California Department of Health Services (DHS) to ensure that the appropriate entities know that a new well has been constructed. Watermaster staff will make best efforts to obtain well design, lithologic and geophysical logs, groundwater level and quality data, and aquifer stress test data.

The presence of abandoned wells is a threat to groundwater supply and a physical hazard. Watermaster staff will review its database, make appropriate inspections, consult with well owners, and compile a list of abandoned wells in the Chino Basin. The owners of the abandoned wells will be requested to properly destroy their wells following the ordinances developed by the county in which the abandoned well is located. Watermaster staff will update its list of abandoned wells annually and provide this list to the counties for follow-up and enforcement.

**Implementation Status.** In Watermaster fiscal year 1999/2000, Watermaster staff began the process of formulating agreements with county and state agencies to notify each other regarding construction of new wells and to obtain construction related information. In 2000/01, Watermaster will continue this process and finalize these agreements. That year and every year thereafter, Watermaster will also prepare

a list of abandoned wells and forward that list to the counties for their action. Watermaster will follow up with the counties to ensure that abandoned wells are destroyed.

**Implementation Actions and Schedule.**

***First Three Years (2000/01 to 2003/03).***

Watermaster shall exercise best efforts to undertake the following actions in the first three years, commencing fiscal year 2000/01:

- Complete initial survey for the groundwater level program and develop long-term program.
- Complete initial survey for groundwater quality program and develop long-term program.
- Complete initial meter installation program for overlying agricultural pool.
- Complete initial ground level survey.
- Complete installation of water level sensors in recharge and retention facilities.
- Complete Santa Ana River surface water monitoring adequacy analysis.
- Continue surface water discharge and quality monitoring at recharge and retention facilities.
- Develop agreements with county and state agencies regarding notification of new well drilling. Well construction and related information will be requested as new wells are identified.

- Annually prepare a list of abandoned wells and forward it to the counties for their action. Follow up with the counties to ensure that abandoned wells are destroyed.

*Years Four to Ten (2003/04 to 2010/11).*

Watermaster shall exercise best efforts to undertake the following actions in years four through ten, commencing fiscal year 2002/03:

- Start and continue long-term groundwater level monitoring program, cause key wells to be relocated and constructed as necessary.
- Start and continue long-term groundwater quality monitoring program, cause key wells to be relocated and constructed as necessary.
- Continue production monitoring.
- Conduct remote sensing analysis using synthetic aperture radar or other techniques at least every ten years (2010/11) or sooner, if necessary.
- Continue ground level survey.
- Continue surface water discharge and quality monitoring in the Santa Ana River.
- Continue surface water discharge and quality monitoring at recharge and retention facilities.
- Well construction and related information will be requested as new wells are identified.
- Annually prepare a list of abandoned wells and forward it to the counties for their action. Follow up with the counties to ensure that abandoned wells are destroyed.

*Years Eleven to Fifty (2011/12 to 2049/50).*

Watermaster shall exercise best efforts to undertake the following actions in years eleven to fifty, commencing fiscal year 2011/12:

- Continue long-term groundwater level monitoring program, cause key wells to be relocated as necessary.
- Continue long-term groundwater quality monitoring program, cause key wells to be relocated as necessary.
- Continue production monitoring.
- Conduct remote sensing analysis using synthetic aperture radar or other technique at least every ten years (2020/21, 2030/31, 2040/41, 2050/51) or sooner, if necessary.
- Continue ground level survey.
- Participate as necessary in the Santa Ana River surface water monitoring.
- Continue surface water discharge and quality monitoring at recharge and retention facilities.
- Well construction related information will be requested as new wells are identified.
- Annually prepare a list of abandoned wells and forward it to the counties for their action. Follow up with the counties to ensure that abandoned wells are destroyed.

Watermaster will share the results of all these activities with the parties and relevant governmental agencies.

## **PROGRAM ELEMENT 2 -- DEVELOP AND IMPLEMENT COMPREHENSIVE RECHARGE PROGRAM**

Watermaster will facilitate the development of physical recharge capacity in the Chino Basin. Recharge facilities will be sized and located to balance long term production and recharge. Watermaster will seek to maximize recharge so that each Producer will be able to Produce both the quantity and quality of water to meet its water supply needs to the greatest extent possible from the water that underlies the Producer's area of benefit.

### **INTRODUCTION**

The need for a comprehensive recharge program is described in the OBMP Phase 1 report dated August 1999.

OBMP Program Element 2 -- Develop and Implement Comprehensive Recharge Program contains action items listed in the OBMP goals matrix (Table 3-8; OBMP Phase 1 Report, August 1999).

Increasing the yield of the Chino Basin by increasing the capture and recharge of storm flow will improve ambient water quality and increase the assimilative capacity of the Chino Basin. Increasing the capture of storm flow will reduce the cost of mitigation requirements for recharge of recycled water. The RWQCB Basin Plan assumes that a certain average annual quantity of storm flow (2300 acre-feet) will be recharged each year. The volume of recycled water that can be used in the Basin, without total dissolved solids (TDS) mitigation, is numerically tied to the average annual quantity of storm flow that recharges the Basin. A decrease in the recharge of storm flow will result in a decrease in the volume of recycled water that will be permitted in the Basin without TDS mitigation. Likewise, an increase in the recharge of storm flow will result in an increase in the volume of recycled water that will be permitted in the Basin without TDS mitigation. Therefore, the volume of recharge from storm flow has a dramatic impact on the future and cost of recycled water recharge.

The annual replenishment obligation will grow from the current level of about 30,000 to about 75,000 acre-feet per year (acre-ft/yr) over the next 20 to 30 years

(ultimate conditions). For ultimate conditions, as much as 31,000 acre-ft/yr of the replenishment obligation could be satisfied by transfer of unProduced rights in the Appropriative pool consistent with the Peace Agreement leaving a net replenishment obligation of about 44,000 acre-ft/yr. Currently, Watermaster has access to spreading facilities with a current capacity of about 29,000 acre-ft/yr when imported water from Metropolitan is available. Assuming replenishment water is available seven out of ten years, the average annual recharge capacity of recharge facilities expected to be available to Watermaster is about 20,000 acre-ft year. The in-lieu recharge potential for the Chino Basin is about 57,000 acre-ft/yr and is expected to remain constant over the next 20 to 30 years based on the water supply plan included in this OBMP. Assuming in-lieu replenishment water is available seven out of ten years, the average annual in-lieu recharge capacity available to Watermaster is about 40,000 acre-ft/yr. The replenishment obligation, and available recharge capacity for current and year 2020 are listed below (acre-ft/yr):

	Year 2000	Year 2020
Replenishment Obligation	31,000	75,000
Replenishment Capacity		
Underproduction	20,000	31,000
Physical Recharge	20,000	20,000
In-lieu Recharge	40,000	40,000
Subtotal	80,000	91,000
Surplus Replenishment Capacity	49,000	16,000

The surplus recharge capacity could be used up quickly by future replenishment needs and implementation of storage and recovery programs. The availability of in-lieu recharge capacity for in-lieu replenishment listed above is not a certainty. In the present mode of basin management, in-lieu recharge capacity is available on an ad hoc basis and requires the cooperation of water supply agencies that have access to supplemental water. If a substantial storage and recovery program is implemented, a major component of it may be satisfaction of replenishment obligations by in-lieu recharge.

In-lieu recharge can be counted on in the short term but cannot be assumed available for ultimate conditions. The safest and most conservative way to ensure that recharge capacity will be available is for Watermaster to develop physical recharge capacity that will meet ultimate replenishment obligations. The estimated annual replenishment obligation for the Chino Basin for ultimate conditions is about 75,000 acre-ft/yr. The physical recharge requirement is equal to the ultimate replenishment obligation (75,000 acre-ft/yr) minus the under production (31,000 acre-ft/yr) and is equal to 44,000 acre-ft/yr. Watermaster will need an annual physical recharge capacity of about 63,000 acre-ft/yr (63,000~44,000/0.7). The distribution of physical recharge capacity by management zone was determined during the development of the *Program Environmental Impact Report for the OBMP* (Tom Dodson and Associates, 2000). The physical recharge capacity by management zone for the year 2020 is estimated to be:

Management Zone 1	34,000 acre-ft/yr
Management Zone 2	0 acre-ft/yr
Management Zone 3	29,000 acre-ft/yr
Total	63,000 acre-ft/yr

The allocation of recharge capacity to management zones is based on balancing recharge and production in each management zone with the ultimate production pattern described in OBMP Program Elements 3 and 5.

The Etiwanda, Montclair and San Sevaine basins are currently used by Watermaster for replenishment. During the development of the OBMP, seventeen additional existing storm water retention basins and one former recycled water percolation facility were identified that could be used to meet future replenishment obligations. These facilities are listed in Table 1. Table 1 also lists the replenishment capacities and improvements required to use these facilities for recharge of supplemental water and storm water. The locations of these basins are shown in Figure 1. These basins are currently used for storm water management and provide some degree of incidental recharge of storm water. From a practical standpoint, these basins will remain in service indefinitely. Because the facilities listed in Table 1 will be available for Watermaster indefinitely, construction of improvements to enable physical recharge for replenishment can be scheduled to meet the actual need. In the



short term, in-lieu recharge may be used for replenishment to the extent that in-lieu recharge and transfers can be done consistent with the goals of the OBMP and the "Peace Agreement."

All the facilities listed in Table 1 for supplemental recharge in Management Zone 1 will need to be constructed to meet replenishment obligations and to balance recharge with production. No new supplemental water recharge facilities are needed in Management Zone 2. Approximately 29,000 acre-ft/yr of new physical recharge capacity will need to be constructed in Management Zone 3 to meet replenishment obligations and to balance long term recharge with production. There is some flexibility in the location of the facilities available in Management Zone 3 and therefore engineering and economic investigations need to be done to select the facilities that should be used for replenishment.

## **B. NEGOTIATION OF AGREEMENTS**

The successful development and implementation of a comprehensive recharge program is not dependent upon Watermaster owning physical assets and real property. Watermaster shall not own recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. It shall never own real property. Watermaster may own water rights in trust for the benefit of the parties to the judgment. However, Watermaster shall arrange, facilitate and provide for recharge by entering into contracts with appropriate persons which may provide facilities and operations for physical recharge of water as required by the Judgment and this Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any and terms to ensure that material physical injury to any party to the Judgment or the Basin is mitigated.

Watermaster will pay the cost of preparing the Recharge Master Plan as the next step in the implementation of the OBMP Program Element 2. When the Plan is prepared, Watermaster shall exercise best efforts to negotiate binding agreements that are necessary and prudent under the circumstances with SBCFCD, CBWCD, IEUA or others to implement recharge projects. Watermaster will seek to reach agreements

that are consistent with the Judgment and the Peace Agreement. In negotiating any binding agreements, Watermaster will acknowledge, take into account and be directed by the following additional considerations:

1. The flood control functions of the various SBCFCD basins capable of artificial recharge in the Chino Basin will take priority over the artificial recharge function.
2. To the extent that artificial recharge can be incorporated into the operations of the SBCFCD basins without increasing the risk of flood damage and loss of life, artificial recharge will be maximized.
3. Multi-purpose projects will be given high priority and will be considered on a case by case basis.
4. Watermaster, in coordination and consultation with IEUA, CBWCD, SBCFCD or others, will prepare the storm water component of the Recharge Master Plan. Watermaster will coordinate with IEUA, CBWCD, and SBCFCD or others to prepare the supplemental water recharge component of the Recharge Master Plan. All costs for constructing the new supplemental water projects that are identified in Phase 1 and Phase 2 of the Recharge Master Plan shall be borne by Watermaster.
5. Watermaster will prepare Phase 2 of the Recharge Master Plan within three years.
6. Phase 2 of the Recharge Master Plan will Produce a list of recharge projects that will be described as either high priority or low priority projects. Watermaster will coordinate with SBCFCD and will exercise best efforts to implement high priority projects that involve the re-operation of existing facilities with small to no improvements at existing facilities within one year of completion of the Phase 2 Recharge Master Plan and no later than four years.

7. Watermaster will coordinate with SBCFCD and exercise best-efforts to implement high priority projects that involve significant improvement and re-operation of existing facilities within two years of completion of the Phase 2 of the Recharge Master Plan.
8. During the planning of new storm water management facilities, Watermaster will evaluate the value of artificial recharge in a new storm water management project and will include storm water artificial recharge in all new projects where Watermaster determines there is a value to the artificial recharge of storm water.
9. Watermaster will coordinate and facilitate the implementation of new supplemental water projects that are identified in Phase 2 of the Recharge Master Plan. The recharge projects that are envisioned as of the date of the adoption of this Implementation Plan are listed in Table 1. However, other projects will be identified in Phase 2 of the Recharge Master Plan investigations.
10. Watermaster will exercise best efforts to coordinate its activities and those of others to maintain or improve recharge performance at basins in a manner such that there is maximum recharge of storm water and supplemental water. Watermaster will consult and coordinate with SBCFCD, CBWCD and other interested persons in selecting an entity to perform maintenance.
11. SBCFCD requires sufficient advance notice to allow conserved water to be recharged. Watermaster will consult and coordinate with SBCFCD to develop a conservation plan for each of the SBCFCD basins, including a schedule of conservation pool elevations, criteria that define when water can be put into conservation and when water in conservation storage must be released to restore the full flood protection capabilities of the basin.
12. All projects will be the subject of appropriate environmental review and, as necessary, mitigation of impacts.

Watermaster shall take the following further actions consistent with the Peace Agreement to develop and implement its comprehensive recharge program:

1. All recharge of the Chino Basin with supplemental water shall be subject to Watermaster approval.
2. Watermaster will ensure that any person may make application to Watermaster to recharge the Chino Basin with supplemental water, including the exercise of the right to offer to sell in-lieu recharge water to Watermaster as provided in the Judgment and this Agreement in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an application by any party to the Judgment if it is inconsistent with the terms of the Agreement, or will cause any material physical injury to any party to the Judgment or the Basin. Any potential or threatened material physical injury to any Party or the Basin caused by the recharge of supplemental water, shall be mitigated as a condition of approval. In the event the material physical injury cannot be mitigated, the request for recharge of supplemental water must be denied.
3. Watermaster shall administer, direct and conduct the recharge of all water in a manner that is consistent with this Agreement, the OBMP and causes no material physical injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide supplemental water upon terms and conditions that are not deemed acceptable to that Party.
4. Watermaster shall undertake recharge using water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the recharge of native storm water.
5. In furtherance of its obligations under this Section, for a period of five years, commencing with Fiscal Year 2000-2001, and within each such Fiscal Year Watermaster shall arrange for the physical recharge of supplemental water in the amount of an annual average of 6,500 acre

feet per year in one or more of the areas commonly known as the Montclair, Brooks and Upland spreading facilities.

- (i) If for any reason at the end of the five year period, a cumulative total of 32,500 acre-feet of physical recharge has not been accomplished under this subdivision, then recharge shall continue at the above referenced locations at the average annual rate of 6,500 acre-feet until the full 32,500 acre feet of physical recharge has been accomplished;
  - (ii) The recharged supplemental water shall increase the operating safe yield under the Judgment. The cost and allocation of this supplemental water under this Section 5.1g shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's share of the initial safe yield;
  - (iii) The need to continue physical recharge under this paragraph shall be evaluated by Watermaster after the conclusion of Fiscal Year 2004-2005. In evaluating further physical recharge pursuant to this paragraph, Watermaster shall take into account the provisions of this Article, the Judgment and the OBMP among all other relevant factors. Except as to Watermaster's determination of no material physical injury, the rights of each party to the Judgment to purchase or lease water to meet its over production obligation shall be unaffected by this provision;
6. Watermaster shall provide an annual accounting of the amount of replenishment and the location of the specific types of replenishment.
  7. Increases in stormwater recharge will be computed when new or enhanced recharge facilities come on line and the parties to the Judgment concur that the new information confirms an increase in recharge at the existing sites without causing a reduction in recharge at

other recharge sites in the basin. Increases in artificial stormwater recharge will be expressed as long term average annual values.

8. Watermaster will determine the baseline stormwater recharge. The baseline estimate of stormwater recharge will be determined by September 30, 2000. In the interim, the baseline will be assumed to be 5600 AF. Watermaster will, at appropriate points in time, review the stormwater recharge performance and redetermine the average annual volume of stormwater recharge and new stormwater recharge above the baseline stormwater recharge.
9. When locating and directing physical recharge, Watermaster shall consider the following guidelines:
  - (i) provide long term hydrologic balance within the areas and sub-areas of the basin
  - (ii) protect and enhance water quality
  - (iii) improve water levels
  - (iv) the cost of the recharge water
  - (v) any other relevant factors
10. Adopt implementing procedures for the matters set forth above, by December 31, 2000.
11. There are some future projects that are technically and institutionally difficult to implement at this time, e.g., recharge of reclaimed water and injection through wells. A plan to integrate these future projects with those identified in Table 1 will be prepared within two years of the

effective date of the Peace Agreement. The plan will include an implementation schedule consistent with the OBMP and a financing plan.

Watermaster shall exercise its best efforts to:

- (a) protect and enhance the safe yield of the Chino Basin through replenishment and recharge;
- b) ensure there is sufficient recharge capacity for recharge water to meet the goals of the OBMP and the future water supply needs within the Chino Basin;
- c) direct recharge relative to production in each area and sub-area of the basin to achieve long term balance and to promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin;
- d) evaluate the potential or threat for any material physical injury to any party to the Judgment or the Chino Basin, including, but not limited to, any material physical injury that may result from any transfer of water in storage or water rights which is proposed in place of physical recharge of water to Chino Basin in accordance with the provisions of Section 5.3;
- e) establish and periodically update criteria for the use of water from different sources for replenishment purposes;
- f) ensure a proper accounting of all sources of recharge to the Chino Basin;
- g) recharge the Chino Basin with water in any area where groundwater levels have declined to such an extent that there is an imminent threat of material physical injury to any party to the Judgment or the Basin;
- h) maintain long-term hydrologic balance between total recharge and discharge within all areas and sub-areas;

- i) Coordinate, facilitate and arrange for the construction of the works and facilities necessary to implement the quantities of recharge identified in the OBMP Implementation Plan.

## **Implementation Status**

The parties to the Peace Agreement have approved Watermaster proceeding as provided above. Implementation measures that follow preparation of the Recharge Master Plan will be predicated on the implementation actions and schedules that are Produced in the Master Plan and the Peace Agreement. However, a strong financial motivation is created for the prompt funding of local recharge projects as soon as possible because the members of the Appropriative Pool under the Judgment will incur replenishment obligations if the safe yield of the Basin is not enhanced by a sufficient quantity to cover the Chino I expansion, and the Chino II Desalters as well as the individual over-production obligations.

## **Implementation Actions and Schedule**

### **First Three Years (2000/01 to 2002/03).**

The following actions will be completed in the first three years commencing fiscal year 2000/01:

- Watermaster advisory committee will form an *ad hoc* committee to coordinate with CBWCD and SBCFCD.
- Implement all high priority recharge projects that involve only re-operation of existing recharge/flood control facilities.
- Complete the Recharge Master Plan.
- Complete design and construction of early action recharge projects identified in the first year of the implementation of the OBMP (potential projects are listed in Table 1 with an A priority and will be proposed for Proposition 13 funding by January 1, 2001).



## **Years Four to Fifty (2003/04 to 2049/50).**

The following actions will be completed in years four through ten, commencing fiscal year 2002/03:

- By year 5 implement all high priority projects that involve construction and re-operation at existing facilities.
- Implement all other recharge projects based on need and available resources.
- Update the comprehensive recharge program every five years.

### **Program Element 3 – Develop and Implement Water Supply Plan for the Impaired Areas of the Basin, Program Element 5 – Develop and Implement Regional Supplemental Water Program**

As urbanization of the agricultural areas of San Bernardino and Riverside counties in the southern half of the Basin occurs, the agricultural water demands will decrease and urban water demands will increase significantly. Future development in these areas is expected to be a combination of urban uses (residential, commercial, and industrial). The cities of Chino, Chino Hills, and Ontario, and the Jurupa Community Services District (JCSD) are expected to experience significant new demand as these purveyors begin serving urban customers in the former agricultural area. Based on current estimates of overlying agricultural pool production, it is expected that at least 40,000 acre-ft/yr of groundwater will need to be produced in the southern part of the Basin to maintain the safe yield.

Based on the data presented in *Optimum Basin Management Program, Phase I Report* (August 1999), municipal and industrial demands are projected to increase 30 percent between 2000 and ultimate build out (assumed to be 2020 in the Phase I report). Several agencies will experience increases in demand exceeding 30 percent, including the cities of Chino, Chino Hills, Norco, Ontario, Cucamonga County Water District (CCWD), Fontana Water Company (FWC), JCSD, and the West San Bernardino County Water District (WSBCWD). Forecasts from municipal and industrial entities indicate that municipal water supply sources for the Chino Basin at build out will consist predominantly of Chino Basin wells through direct use or treatment and use, groundwater and treated surface water from other basins, and MWDSC supplies. There is approximately 48,000 acre-ft/yr of agricultural production in the southern part of the Chino Basin in the year 2000, and this production will reduce to about 10,000 acre-ft/yr in the year 2020 at build-out. This decline in agricultural

production must be matched by new production in the southern part of the Basin or the safe yield in the Basin will be reduced. The remaining 10,000 acre-ft/yr of production in the southern part of the Basin will be used by the State of California. Future supplemental water supplies will come from expansion of the CCWD Lloyd Michael water treatment plant (WTP) and the WFA/JPA Agua de Lejos WTP.

Considerable discussion of the alternative water supply plans occurred at the OBMP workshops. The discussions focused, in part, on the assumption and details of each alternative and cost. Based on technical, environmental, and cost considerations, the stakeholders selected the water supply plan described in Table 2. Groundwater production for municipal use will be increased in the southern part of the Basin to: meet the emerging demand for municipal supplies in the Chino Basin, maintain safe yield, and to protect water quality in the Santa Ana River. A preliminary facility plan (Revised Draft Water Supply Plan Phase I Desalting Project Facilities Report) was prepared in June, 2000, that describes the expansion of the Chino I Desalter and the construction of the Chino II Desalter to be built in the JCSD service area (Attachment D). New southern Basin production for municipal use will require desalting prior to use. The cities of Chino, Chino Hills, Ontario and Norco, and the JCSD will maximize their use of groundwater from the southern part of the Basin prior to using other supplies. Chino Desalter No. 1 (the SAWPA Desalters), which is about to start production will have to be expanded from 8 million gallons per day (mgd) to 10 or 12 mgd by 2003. The Chino Desalter No. II will start construction in early 2001 as the Desalters will need to be on-line by 2003 with a capacity of 10 mgd. Both these Desalters will be expanded in the future. The general location of these Desalters, their respective well fields, product water pipelines, and delivery points are shown in Figure 2. Table 3 shows the timetable for the new Desalters capacity along with the salt removal capacity of these Desalters. Watermaster and IEUA have completed a draft project report for the expansion of the No. I, and the construction of Desalter No. II. The facility plan calls for Desalter No. I to be expanded from its existing capacity of 8 mgd to 10 mgd and the construction Desalter No. II with a capacity of 10 mgd by 2003. This facility plan will be submitted as part of an application to SAWPA in July 2000 to obtain Proposition 13 funding for the construction of these Desalters. Construction will start in January 2001 and these facilities will be online in 2003. These two Desalters will remove about 36,000 tons of salt per year from the basin which is about 46 percent of total salt removal capacity of Desalters envisioned in the OBMP (77,000 tons/year).

Imported water use will increase to meet emerging demands for municipal and industrial supplies in the Chino Basin area, Watermaster replenishment, and storage and recovery programs or conjunctive use. Expanded use of imported water in the northern part of the Basin will have a lower priority than maintaining groundwater production in the southern part of the Basin.

Recycled water use (direct use and recharge) will increase to meet emerging demands for non-potable water and artificial recharge. Under the current Basin Plan, all new recycled water use will require mitigation for TDS and nitrogen impacts. Recycled water use will be expanded as soon as practical. The two new Desalters described above and the increase in storm water recharge will provide mitigation for the expanded use of recycled water.

Watermaster is preparing a facilities report to be submitted to SAWPA as part of IEUA's application for funding from Proposition 13.

### **Implementation Status**

Watermaster, working with IEUA, WMWD, OCWD or the Project Committee 14, and Producers, is in the process of finalizing a facilities plan that will result in the expansion of the Chino I Desalter and the construction of the new Chino II Desalter. Construction of these facilities will begin in early 2001( Attachment I).

### **Implementation Actions and Schedule**

#### ***First Three Years (2000/01 to 2003/04).***

Watermaster shall exercise best efforts to undertake the following actions in the first three years, commencing fiscal year 2000/01:

- Complete the Water Facilities Plan Report for the Expansion of the Chino I Desalter and the construction of the Chino II Desalter. It should be noted that this action is entirely consistent with the OBMP, and is being taken prior to completion of the OBMP.
- Start expansion of the Chino I Desalter and the construction of the Chino II Desalter in early 2001.

#### ***Years Four to Fifty (2004/05 to 2049/50).***

Watermaster shall exercise best efforts to undertake the following actions in years four to fifty, commencing fiscal year 2004/05:

- Complete construction and start up of the expanded Chino I and new Chino II Desalters.
- Watermaster, IEUA and WMWD will periodically review the Regional Water Supply Plan and the need for new Desalter capacity in the southern water-quality impaired part of the Basin, and initiate the construction of new Desalter capacity as determined by Watermaster. Expansion of the Desalter capacity will occur as agricultural production in the southern water-quality impaired part of the basin declines.
- IEUA will construct recycled water facilities to meet the demand for recycled water and for replenishment.

**PROGRAM ELEMENT 4 – DEVELOP AND IMPLEMENT COMPREHENSIVE GROUNDWATER MANAGEMENT PLAN FOR MANAGEMENT ZONE 1 (MZ1)**

The occurrence of subsidence and fissuring in Management Zone 1 is not acceptable and should be reduced to tolerable levels or abated. The OBMP calls for a management plan to reduce or abate the subsidence and fissuring problems to the extent that it may be caused by production in MZ1. There is some uncertainty as to the causes of subsidence and fissuring and more information is necessary to distinguish among potential causes. Therefore an interim management plan will be developed to minimize subsidence and fissuring while new information is collected to assess the causes and to develop an effective long-term management plan.

**Description.**

The interim management plan consists of the following activities:

- Voluntary modifications to groundwater production patterns in Management Zone 1. During fiscal year 1999/2000 the cities of Chino and Chino Hills as well as the State of California have voluntarily reduced their production in the vicinity of recent ground fissures.
- Monitor long term balance of recharge and production in Management Zone 1.
- Determine gaps in existing knowledge.
- Implement a process to fill the gaps in existing knowledge. This include(s) hydrogeologic, geophysical, and remote sensing

investigations of Management Zone 1, as well as certain monitoring programs, including piezometric, production, water quality, ground level, and subsidence monitoring.

Formulate a long-term management plan. The long-term management plan will include goals, activities to achieve those goals, and a means to evaluate the success of the plan.

The long-term management plan will be formulated while the interim management plan is in-place based on investigations, monitoring programs and data assessment. It may include modifications to groundwater pumping rates and the locations of pumping, recharge, and monitoring. The long-term management plan will be adaptive in nature – meaning monitoring and periodic data assessment will be used to evaluate the success of the management plan and to modify the plan, if necessary.

#### **Implementation Status.**

Watermaster will develop the interim management plan during fiscal year 2000/01. Watermaster's budget estimate for this effort in fiscal 2000/01 is \$100,000. Monitoring and construction of extensometers for this effort is included in Program Element 1.

Approval of The Peace Agreement will also provide the adoption of Basin-wide measures that will benefit conditions within MZ 1. These measures include the following a portion of which are referenced on pages 16-19 and are repeated below in the interest of completeness and clarity:

#### **Recharge and Replenishment.**

After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Recharge and Replenishment:

- (a) All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval.
- (b) Watermaster will ensure that any person may make application to Watermaster to Recharge the Chino Basin with Supplemental Water, including the exercise of the right to offer to sell in-lieu Recharge water to Watermaster as provided in the Judgment and the Agreement in a manner that is consistent with the

OBMP and the law. Watermaster shall not approve an application by any party to the Judgment if it is inconsistent with the terms of the Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any Party or the Basin caused by the Recharge of Supplemental Water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recharge of Supplemental Water must be denied.

- (c) Watermaster shall administer, direct and conduct the Recharge of all water in a manner that is consistent with this Agreement, the OBMP and causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that Party.
- (d) Notwithstanding Section 5.1(c), CBWCD shall reserve its complete discretion to Recharge the Basin with water other than Supplemental Water as may be authorized by general law so long as the Recharge is in accordance with the limitations in the Judgment, if any and is in accordance with the provisions of Section 5.1(d)(i)-(v).
  - (i) Upon request by Watermaster CBWCD shall exercise Best Efforts to consult, coordinate and cooperate with Watermaster when recharging water into the Basin;
  - (ii) CBWCD shall provide Watermaster with reasonable notice in advance of any material change in its historic Recharge operations;
  - (iii) CBWCD shall not be required to provide funding for Recharge projects merely by virtue of its execution of this Agreement;
  - (iv) CBWCD shall Recharge the Basin in a manner that does not cause Material Physical Injury to any party to the Judgment or the Basin. Upon Watermaster's receipt of a written allegation that an existing or proposed CBWCD Recharge activity has or will cause Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing within a reasonable time. Watermaster shall provide

notice and opportunity to be heard to interested parties to the Judgment including CBWCD. After hearing, Watermaster may approve, deny or condition the CBWCD's Recharge. Watermaster's decision shall be based upon the record and it shall be subject to the court's review;

- (v) CBWCD's Recharge of the Basin coupled with an intent to store and recover water shall require a storage and recovery agreement.
- (e) Watermaster shall exercise its Best Efforts to:
  - (i) protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge;
  - (ii) ensure there is sufficient Recharge capacity for Recharge Water to meet the goals of the OBMP and the future water supply needs within the Chino Basin;
  - (iii) direct Recharge relative to Production in each area and sub-area of the Basin to achieve long term balance and to promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin;
  - (iv) evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in storage or water rights which is proposed in place of physical Recharge of water to Chino Basin in accordance with the provisions of Section 5.3;
  - (v) establish and periodically update criteria for the use of water from different sources for Replenishment purposes;
  - (vi) ensure a proper accounting of all sources of Recharge to the Chino Basin;
  - (vii) Recharge the Chino Basin with water in any area where groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin;

- (viii) maintain long-term hydrologic balance between total Recharge and discharge within all areas and sub-areas;
  - (ix) coordinate, facilitate and arrange for the construction of the works and facilities necessary to implement the quantities of Recharge identified in the OBMP Implementation Plan.
- (f) Watermaster shall undertake Recharge, using water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water.
- (g) In furtherance of its obligations under this Section, for a period of five years, commencing with Fiscal Year 2000-2001, and within each such Fiscal Year Watermaster shall arrange for the physical Recharge of Supplemental Water in the amount of an annual average of 6,500 acre-feet per year in one or more of the areas commonly known as the Montclair, Brooks and Upland spreading facilities.
- (i) If for any reason at the end of the five year period, a cumulative total of 32,500 acre-feet of physical Recharge has not been accomplished under this subdivision, then Recharge shall continue at the above referenced locations at the average annual rate of 6,500 acre-feet until the full 32,500 acre-feet of physical Recharge has been accomplished;
  - (ii) The Recharged Supplemental Water shall increase the Operating Safe Yield under the Judgment. The cost and allocation of this Supplemental Water under this Section 5.1g shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's share of the initial Safe Yield;
  - (iii) The need to continue physical Recharge under this paragraph shall be evaluated by Watermaster after the conclusion of Fiscal Year 2004-2005. In evaluating further physical Recharge pursuant to this paragraph, Watermaster shall take into account the provisions of this Article, the Judgment and the OBMP among all other relevant factors. Except as to Watermaster's determination of Material Physical Injury, the rights of each party to the Judgment to purchase or lease water to



meet its over-Production obligation shall be unaffected by this provision;

- (h) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. It shall never own real property. However, Watermaster may own water rights in trust for the benefit of the parties to the Judgment. Moreover, Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and this Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any.
- (i) CBWCD's rights and obligations to obtain Replenishment Water are unaffected by the execution of this Agreement. Its obligation, rights and duties regarding Recharge may be set by arms length negotiation through separate agreement or as they otherwise exist under general law and the Judgment.
- (j) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge.

### **Implementation Actions and Schedule**

#### ***First Five Years (2000/01 to 2004/05).***

**The following actions will be completed in the first three years commencing fiscal year 2000/01:**

For a period of five years, commencing with Fiscal Year 2000-2001, and within each such Fiscal Year, arrange for the physical recharge of Supplemental Water in the amount of an annual average of 6,500 acre feet per year in one or more of the areas commonly known as the Montclair, Brooks and Upland spreading facilities. The need to continue physical recharge at these locations shall be evaluated by Watermaster after the conclusion of Fiscal Year 2004-2005.

- 2000/01 – A Management Zone 1 committee will develop a recommended interim management plan consistent with the above description.
- 2001/02 to 2003/04 – Implement the approved interim management plan, including appropriate monitoring; and annual assessment of data from monitoring programs, and modification of monitoring programs if necessary.
- 2004/05 – Develop long-term management plan.
- Implement the long term management plan.

*Years Six to Fifty (2005/06 to 2049/50).*

The following actions will be completed in years six through fifty, commencing fiscal year 2002/03:

- 2007/08 and every three years thereafter – Assess data from monitoring programs every three years and modify of management plan if necessary.
- Implement the long term management plan.

**PROGRAM ELEMENT 6 – DEVELOP AND IMPLEMENT COOPERATIVE PROGRAMS WITH THE REGIONAL BOARD AND OTHER AGENCIES TO IMPROVE BASIN MANAGEMENT, and PROGRAM ELEMENT 7 – SALT MANAGEMENT PROGRAM**

These program elements are needed to address some of the water quality management problems that have occurred in the Basin. These water quality problems are described in Section 2 *Current Physical State of the Basin* and Table 3-8 in Section 3 *Goals of the OBMP* of the OBMP Phase 1 Report. The specific water quality issues addressed by these program elements are listed below:

- Watermaster needs to routinely demonstrate that implementation of the OBMP will lead to groundwater quality improvements. Watermaster will develop and use a method to determine water quality trends and to verify whether the OBMP is improving water quality.
- There is legacy contamination in the vadose zone from past agricultural activities (TDS and nitrogen) that will continue to degrade groundwater long into the future.

- Watermaster does not have sufficient information to determine whether point and non-point sources of groundwater contamination are being adequately addressed.
- There is ongoing salt and nitrogen loading from agriculture.

## **Demonstration of Water Quality Improvement**

### **Description.**

The Court has indicated that Watermaster needs to routinely demonstrate that implementation of the OBMP will lead to groundwater quality improvements. Groundwater quality monitoring will be done in Program Element 1 and can be used to assess the long-term water quality benefits of the OBMP. In the short term, groundwater quality monitoring will not be a true metric of the water quality benefits of the OBMP. Water quality changes will occur very slowly. Water quality may continue to degrade after implementation of the OBMP due to legacy contamination in the vadose zone. Watermaster committed to the development of a salt budget tool that enables Watermaster to evaluate the water quality benefits of OBMP. In fiscal year 1999/2000, Watermaster developed the preliminary version of the salt budget tool to evaluate the projected OBMP performance in the Program Draft Environmental Impact Report for the OBMP. The salt budget tool is a spreadsheet tool that estimates the flow-weighted concentration of TDS and nitrogen into the Chino Basin at the management zone and basin levels, and estimates the TDS and nitrogen impacts of the OBMP on the Santa Ana River. The preliminary version of the salt budget tool needs to be revised to more accurately account for storm water recharge and storm water quality. The cost to update the salt budget tool will range between \$40,000 to \$45,000. Subsequent uses, in either OBMP updates or *ad hoc* investigations, will involve using and analyzing new water quality input data based on new monitoring data and revised water and waste management scenarios and program refinements as more is learned.

**Implementation Status.** As part of the Phase 2 OBMP process, Watermaster conducted preliminary salt budget studies. The preliminary salt budget studies were completed in May of 2000. Watermaster will update and refine the salt budget tool during Watermaster fiscal year 2000/01.

## **Cooperative Efforts with the Regional Water Quality Control Board**

### **Description.**

Watermaster does not have sufficient information to determine whether point and non-point sources of groundwater contamination are being adequately addressed. Watermaster's past monitoring efforts have been largely confined to mineral constituents in the southern half of the Basin and to available monitoring data supplied by municipal and industrial Producers. The Regional Water Quality Control Board (Regional Board) has limited resources to detect, monitor and cause the clean up of point and non-point water quality problems in the Chino Basin. The Regional Board commits its resources to enforce remedial actions when it has identified a potential responsible party. Watermaster can improve water quality management in the Basin by committing resources to:

- identify water quality anomalies through monitoring;
- assist the Regional Board in determining sources of the water quality anomalies;
- establish priorities for clean-up jointly with RWQCB; and
- remove organic contaminants through regional groundwater treatment projects in the southern half of the Basin.

The last bulleted item requires some explanation. The well field for the Chino I Desalter will eventually intercept a solvent plume of unknown origin that is emanating from the Chino airport area. There is a second solvent plume northeast of the Chino airport area that could be intercepted by the current Desalter or another future Desalter. This will require additional treatment for the water Produced by the Desalter. The Desalter project can be used to clean up these plumes at some additional cost. The cost of cleaning up the solvent plumes at the Desalters will be less than the cost of a dedicated solvent removal system. The additional cost should be paid for by the entity responsible for the solvent discharge.

Implementation Status. Watermaster is in the process of identifying water quality anomalies through its groundwater monitoring programs in Program Element 1. A revised anomaly map similar to Figure 2-58 in the OBMP Phase 1 report will be prepared by Watermaster. These water quality anomaly maps will be revised at least annually by Watermaster. The maps and supporting data will be submitted to the RWQCB for their use.

Watermaster will form an ad hoc committee, hereafter *water quality committee*, to review water quality conditions in the Basin and to develop cooperative strategies and plans to improve water quality in the Basin. The committee will meet regularly with Regional Board staff to recommend cooperative efforts for monitoring groundwater quality and detecting water quality anomalies. The schedule and frequency of meetings will be developed with the Regional Board during fiscal 2000/01 of the OBMP implementation. Watermaster will budget sufficient funds for fiscal 2000/01 for the first year of ad hoc committee activities. Watermaster will refine its monitoring efforts to support the detection and quantification of water quality anomalies. This may require additional budgeting for analytical work and staff/support. If necessary, Watermaster will conduct investigations to assist the Regional Board in accomplishing mutually beneficial objectives. Watermaster will seek funding from outside sources to accelerate detection and clean up efforts.

#### TDS and Nitrogen (Salt) Management in the Chino Basin

Description. TDS and nitrogen management will require minimizing TDS and nitrogen additions by fertilizers and dairy wastes, desalting of groundwater in the southern part of the Basin, and maximizing the artificial recharge of storm water. The latter two management components are included in Program Elements 3 and 2, respectively

The agricultural area in the southern part of the Chino Basin will gradually convert to urban uses over the next 20 to 30 years and, thus, in the long term, the TDS and nitrogen challenges from irrigated agriculture and dairy waste management will go away. The Regional Board adopted new dairy waste discharge requirements in 1999. The requirements include the following:

- Each dairy will develop and implement an engineered waste management plan that will contain dairy process water and on-dairy precipitation runoff for up to a 25-year, 24-hour storm event
- Manure scraped from corrals must be exported from the dairy within 180 days
- All manure stockpiled in the Chino Basin as of December 1, 1999, will be exported from the Basin by December 1, 2001.
- No manure may be disposed of in the Chino Basin
- Some manure can be applied to land at agronomic rates if and only if in the opinion of the Executive Officer of the RWQCB there is

reasonable progress toward the construction of a new Desalter in the Chino Basin.

The urban land use that will replace agriculture will require low TDS municipal supplies that in turn will produce lower TDS irrigation returns to groundwater than those generated by agriculture. The construction of Desalters in the southern part of the Basin (as described in Program Elements 3 and 5) will extract and export large quantities of salt from the Basin. If Desalters are installed or expanded as currently being evaluated, approximately 50% of the salt removal capacity contemplated by 2020 in the Phase I report will be occurring by 2005. By 2020, the salt removal capacity of the Desalters will reach over 77,000 tons per year. Watermaster expects a net reduction in salt loading of about 77,000 to 100,000 tons of salt per year in the next 20 to 30 years.

**Implementation Status.** Watermaster will continue to monitor the nitrogen and salt management activities within the basin and update its nitrogen and salt management strategy as necessary.

#### Implementation Actions and Schedule

*First Three Years (2000/01 to 2002/03).* The following actions will be completed in the first three years commencing fiscal year 2000/01:

- Watermaster will form an ad hoc committee, hereafter *water quality committee*. The schedule and frequency of meetings will be developed with the Regional Board during the first year of the OBMP implementation.
- Watermaster will refine its monitoring efforts to support the detection and quantification of water quality anomalies. This may require additional budgeting for analytical work and staff/support.
- If necessary, Watermaster will conduct investigations to assist the Regional Board in accomplishing mutually beneficial objectives.
- Watermaster will seek funding from outside sources to accelerate detection and clean up efforts.
- Develop salt budget goals, develop the salt budget tool described above and review all the OBMP actions.
- Watermaster will continue to monitor the nitrogen and salt management activities within the basin.

At the conclusion of the third year, the *water quality committee* will have met several times, developed and implemented a cooperative monitoring plan with the Regional Board, and developed a priority list and proposed schedule for cleaning up all known water quality anomalies.

***Years Four through Fifty (2003/04 to 2049/50).***

The following actions will be completed in years four through fifty, commencing fiscal year 2003/04:

- Continue monitoring and coordination efforts with the Regional Board.
- Annually update priority list and schedule for cleaning up all known water quality anomalies.
- Continue to seek funding from outside sources to accelerate clean up efforts.
- Implement projects of mutual interest.
- As part of periodic updates of the OBMP, re-compute the salt budget using the salt budget tool. The salt budget tool will be used to reassess future OBMP actions to ensure that salt management goals are attained.
- Watermaster will continue to monitor the nitrogen and salt management activities within the basin.

**PROGRAM ELEMENT 8 – DEVELOP AND IMPLEMENT GROUNDWATER STORAGE MANAGEMENT PROGRAM, PROGRAM ELEMENT 9 – DEVELOP AND IMPLEMENT STORAGE AND RECOVERY PROGRAMS**

Watermaster seeks to develop a storage and recovery program that will benefit all the parties in the Basin and ensure that Basin water and storage capacity are put to maximum beneficial use while causing no material physical injury to any Producer or the Basin.

The following definitions were developed by Watermaster:

*Operational Storage Requirement* - The operational storage requirement is the storage or volume in the Chino Basin that is necessary to maintain safe yield. In the context of this storage and recovery program, the operational storage is estimated to be about 5,300,000 acre feet. An engineering analysis will be

done to assess the operational storage requirement of the Basin as part of the implementation of this program.

*Safe Storage* – Safe storage is an estimate of the maximum storage in the Basin that will not cause significant water quality and high groundwater related problems. In the context of this storage management program, the safe storage is estimated to be about 5,800,000 acre-ft. An engineering analysis will be done to assess the safe storage requirement of the Basin as part of the implementation this plan.

*Safe Storage Capacity* – The safe storage capacity is the difference between safe storage and operational storage requirement and is the storage that can be safely used by Producers and Watermaster for storage programs. Based on the above, the safe storage capacity is about 500,000 acre-ft including water in the existing storage accounts. The allocation and use of storage in excess of safe storage will preemptively require mitigation, that is, mitigation must be defined and resources committed to mitigation prior to allocation and use.

Key Elements of the Storage and Recovery Program will include Watermaster taking the following actions:

**Storage and Recovery.**

After the Peace Agreement is effective Watermaster shall act in accordance with the following actions regarding the storage and recovery of water:

- (a) In General.
  - (i) All storage capacity shall be subject to regulation and control by Watermaster;
  - (ii) No person shall store water in and recover water from the Chino Basin without an agreement with Watermaster;
  - (iii) Watermaster will ensure that any person, including but not limited to the State of California and the Department of Water Resources may make application to Watermaster to store and recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an application to store and



recover water if it is inconsistent with the terms of this Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any Party or the Basin caused by the storage and recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and recovery must be denied.

- (iv) This Agreement shall not be construed to limit the State or its department or agencies from using available storage capacity in the Basin in accordance with the provisions of this Section under a storage and recovery agreement with Watermaster.

(b) Local Storage.

- (i) For a period of five years from the Effective Date, Watermaster shall ensure that: (a) the quantity of water actually held in Local Storage under a storage agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its un-Produced carry-over water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of carry-over water and Supplemental Water held in its storage account, subject only to the loss provisions set forth in this Section 5.2. This means a party to the Judgment may increase the total volume of carry-over water it holds in Local Storage up to five years after the Effective Date and as Watermaster may approve pursuant to a Local Storage agreement for Supplemental Water.
- (ii) For a period of five years from the Effective Date, any party to the Judgment may make application to Watermaster for a Local Storage agreement, whereby it may store Supplemental Water in the Chino Basin.
- (iii) Watermaster shall provide reasonable advance written notice to all interested parties of the proposed Local Storage agreement, prior to approving the agreement. The notice shall include the persons engaged in the Local Storage, the location of the Recharge and Production facilities and the potential for any Material Physical Injury, if any.

- (iv) Watermaster shall approve the Local Storage agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then existing Local Storage agreements for all parties to the Judgment does not exceed the cumulative total of 50,000 acre-feet; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing the Supplemental Water into Local Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury.
- (v) There shall be a rebuttable presumption that the Local Storage agreement for Supplemental Water does not result in Material Physical Injury to a party to the Judgment or the Basin.
- (vi) In the event any party to the Judgment, or Watermaster, objects to a proposed Local Storage agreement for Supplemental Water and submits evidence that there may be a Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing and allow the objecting party to the Judgment a reasonable opportunity to be heard.
- (vii) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other information Watermaster shall reasonably request. Watermaster shall not grant any person the right to store more than the then existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental Water from the cumulative maximum of 50,000 acre-feet.
- (viii) Watermaster shall base any decision to approve or disapprove any

proposed agreement upon the record.

- (ix) Any party to the Judgment may seek judicial review of Watermaster's decision.
- (x) Five years after the Effective Date, Watermaster shall have discretion to place reasonable limits on the further accrual of carry-over and Supplemental Water in Local Storage. However, Watermaster shall not limit the accrual of carry-over Local Storage for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing carry-over storage pursuant to *Lease of Corporate Shares Coupled with Irrevocable Proxy, dated July 1, 1993 between Cucamonga County Water District and Fontana Water Resources Inc. and the Settlement Agreement Among Fontana Union Water Company, Kaiser Steel Reserves Inc., San Gabriel Valley Water Company and Cucamonga County Water Districts dated February 7, 1992*, to a quantity less than 25,000 acre-feet for the term of this Agreement.
- (xi) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and Section 5.2(c) below;
- (xii) Watermaster shall set the annual rate of loss from Local Storage for parties to the Judgment at zero until 2005. Thereafter the rate of loss from Local Storage for parties to the Judgment will be 2% until recalculated based upon the best available scientific information. Losses shall be deducted annually from each party to the Judgment's storage account;
- (xiii) Watermaster shall allow water held in storage to be transferred pursuant to the provisions of Section 5.3 below. Storage capacity is not transferable by any party to the Judgment or any Party hereto.

(c) Storage and Recovery Program.

- (i) Watermaster will ensure that no person shall store water in and recover water from the Basin, other than pursuant to a Local Storage agreement, without a storage and recovery agreement with Watermaster;
- (ii) Watermaster shall prepare a list of basic information that a proposed applicant for a Storage and Recovery Program must submit to Watermaster prior to the execution of a storage and recovery agreement;
- (iii) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons.
- (iv) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.
  - (a) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts;
  - (b) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits;
- (v) For the term of this Agreement, members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively "compensation") as directed by the Non-Agricultural and the Appropriative Pools;
- (vi) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to off-set the

Watermaster's cost of operation, to reduce assessments on the parties to the Judgment within the Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool;

- (vii) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval;
  - (viii) Watermaster reserves discretion to negotiate appropriate terms and conditions or to refuse to enter into a Storage and Recovery or to deny any request. However, with respect to persons not parties to the Judgment, Watermaster reserves complete discretion. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program upon the record. However, it may not approve a proposed Storage and Recovery Program unless it has first imposed conditions to reasonably and fully mitigate any threatened or potential Material Physical Injury;
  - (ix) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program.
- (d) The specific terms and conditions for the use of the facilities of CBWCD in connection with Local Storage or Storage and Recovery Programs shall be covered under separate agreements reached by arms length bargaining between Watermaster and CBWCD. Watermaster and any other Party shall not be entitled to the income received by CBWCD for use of its facilities in connection with Local Storage or Storage and Recovery Programs without the consent of CBWCD. Nothing in this Agreement shall be construed as preventing CBWCD from entering into an agreement with others for use of its facilities in a manner consistent with Section 5.1(d) i-v of this Agreement.
- (e) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a storage and recovery agreement.

- (f) Watermaster shall exercise Best Efforts to undertake the following measures:
- (i) Complete the Short-Term conjunctive use project, authorized by Watermaster and conducted by IEUA, TVMWD and MWD;
  - (ii) Evaluate and develop a seasonal peaking program for in-Basin use and dry year yield to reduce the Basin's demand on the Metropolitan Water District for imported water;
  - (iii) Evaluate and develop a dry year export program;
  - (iv) Evaluate and develop a seasonal peaking export program;

#### Re-determination of Safe Yield and Storage Loss Rates

Safe Yield is currently 140,000 acre-feet per year. The safe yield and storage loss rate will be assessed every ten years starting in the year 2010/14. The ten-year period of 2000/01 to 2009/10 will be used to compute the safe yield and to estimate the storage loss rate.

Safe yield and storage loss rate determinations require accurate groundwater level and production data. Watermaster does not have accurate production data from agricultural Producers. Program Element 1 of the OBMP includes a program to install meters and obtain more accurate production measurements from wells in the Basin. It will take three years to implement the initial part of this program.

The safe yield in the Judgment was developed over the period 1965 to 1974 using the procedure described in Section 2 of the OBMP Phase I Report. The safe yield will be re-determined in year 2010/11 using the ten-year period 2000/01 to 2009/10 because it will contain accurate production data and groundwater level data. A ten-year period is proposed to be consistent with the method used in the engineering work for the Judgment and is the minimum necessary to estimate a safe yield.

Re-determination of the storage loss rate will require the use of a numerical model. The model will be used as follows:

- Calibrate the numerical model for the safe yield period. In the calibration process, the hydrology for the period 2000/01 to 2009/10 will be developed including deep percolation of applied water and precipitation, unmeasured storm water recharge, subsurface inflow

from adjacent basins, and uncontrolled discharges from the Basin (rising water).

- Once calibrated, the water supply plans of the Producers and other storage entities will be modified to assume that no water would be put into storage accounts. The model will be rerun with this assumption and the results will be compared to the calibration run to determine losses from storage and the storage loss rate.
- The storage loss rate will be set based on the relationship of water in storage and associated losses.

Watermaster's new groundwater level and production monitoring are crucial to this effort.

#### Implementation Actions and Schedule

##### *First Three Years (2000/01 to 2002/03).*

The following actions will be completed in the first three years commencing fiscal year 2000/01:

- Evaluate need to modify Watermaster UGRR regarding storage management plans and procedures.
- Determine the operational storage requirement and safe storage.

##### *Years Four through Fifty (2003/04 to 2049/50).*

The following actions will be completed in years four through fifty, commencing fiscal year 2003/04:

- In year 2010/11 and every ten years thereafter, compute safe yield and storage loss rate for prior ten-year period, and reset safe yield and storage loss rates for the next the next ten-year period. Reassess storage management plan and modify Watermaster UGRR, if needed.
- Start assessing losses at 2% per year in year 2005. This amount will be subject to modification in future years.

## SALT CREDITS DEVELOPED IN THE OBMP

### Salt Credits from Desalters

The Regional Board has determined that there is no assimilative capacity for TDS in most of the basin with current TDS objectives and subbasin boundaries. The Regional Board will probably adopt new TDS objectives using the boundaries of Management Zones 1 through 5 by the end of 2000. When the new boundaries and objectives are adopted the Regional Board will also determine that there is no assimilative capacity for TDS. This has the effect of requiring TDS reductions in either recycled water prior to recharge (through desalting) or the removal of an equivalent mass of salt from groundwater in the same management zone that the recycled water recharge is occurring. Desalination of wastewater prior to recharge is generally more expensive than desalting groundwater. Desalination of groundwater must occur in the southern end of Management Zones 1 through 3 and in Management Zones 4 and 5 to put groundwater in these areas to beneficial use and to maintain the safe yield of the basin. The amount of salt that would need to be removed from the basin for a 20,000 to 30,000 acre-ft/yr recycled water recharge program would be about 6,800 to 10,000 tons per year, respectively. If equal parts of recycled, state project and storm water are recharged then the offset drops to about 1,000 to 1,400 tons per year, respectively

Table 3 shows that the amount of salt being removed from the basin by the Desalters described in the OBMP in year 2003 to be about 36,000 tons per year and will reach about 77,000 tons per year in about 20 or more years. In addition to the Desalter the new dairy waste management requirements promulgated by the Regional Water Control Board will reduce the salt added by the dairies from over 30,000 tons per year to about 12,000 tons per year (dairy liquid waste only) in the current year. The residual 12,000 tons per year will reduce gradually over the next 20 to 30 years to negligible levels. By the end of 2003 the combined salt extraction by Desalters and reduction of dairy waste discharged to the basin will be about 54,000 tons per year – in the next 20 to 30 years this total will reach over 100,000 tons per year. This salt reduction rate will eventually improve the quality of groundwater in the Chino Basin.

The salt reduction described above is intended to be used as an offset or credit to mitigate the increased salt loading from the recharge of recycled water. The appropriators that own recycled water and IEUA and WMWD agreed to own and operate the Desalters through SAWPA PC#14, the OBMP Desalters and have been



allocated the salt credits that could be used to offset the TDS impacts of recycled water recharge.

### **Salt Credits from Recharge of New Storm Water**

Urban storm water is generally of low TDS and is almost always less than the TDS objectives. Surface water quality sampling by Watermaster in the Montclair and Brooks basins routinely demonstrate that urban storm water has a TDS concentration less than 100 mg/L – about 150 mg/l less than the TDS objectives in management Zones 1 through 3. New storm water recharge occurs when urban storm water is diverted into recharge facilities instead of allowing the runoff to flow to the Santa Ana River. As per the Judgment, yield augmentation from new storm water recharge is allocated to members of the appropriative pool regardless of who causes new storm water recharge to occur. New urban storm water recharge can be blended with recycled water to dilute the TDS concentration of the recycled water and reduce or eliminate the need for TDS mitigation. From a TDS perspective, the effect of recharging urban storm water that has a TDS concentration less than the TDS objective is similar to salt removal from a Desalter, and the OBMP Peace Agreement allocates salt removal credits to the appropriators.

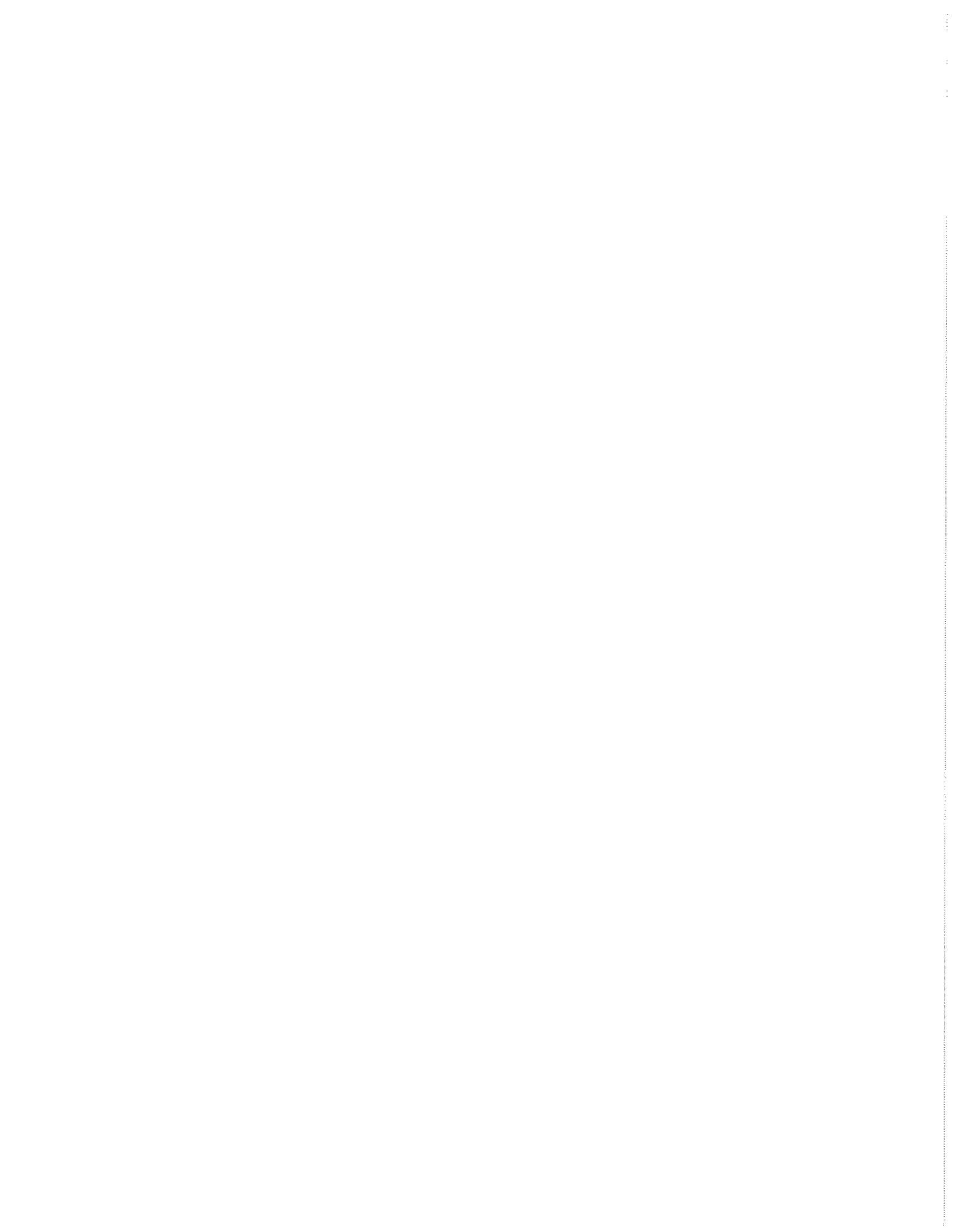


Table 1 -- Recharge Projects to Increase Storm Water Recharge and Recharge Capacity of Supplemental Water

Basin	MZ	Current Owner	Native Water Conservation		Estimated Supplemental Recharge Capacity <sup>1</sup>		Supplemental Water Sources	Improvements/Activities Description	Overall Priority (A-highest C-lowest)	D/Late.
			Current Estimate (acre-ft/yr)	Goal (acre-ft/yr)	Current Estimate (acre-ft/yr)	Maximum Potential (acre-ft/yr)				
<i>Management Zone 1 Goals</i>										
				3,960						
				30,100						
<i>Upland Basin</i>										
	1	City of Upland	890	1,100	0	5,000	Imported Water Recycled Water	Acquire property Facility Improvements Expand MWDSC turnout OC 59 New inlet from San Antonio Creek Emergency outlet to San Antonio Creek Removal of inert fill Recycled water pipeline and inlet Optimize the basin bottom geometry	C C A A A C A	0 0 1 1 1 0 1
<i>College Heights Basins</i>										
	1	CBWCD	0	500	0	11,000	Imported Water Recycled Water	Facility Improvements Expand MWDSC turnout OC 59 New inlet from San Antonio Creek Emergency outlet to San Antonio Creek Removal of inert fill Recycled water pipeline and inlet	C A A A C	0 1 1 1 0
<i>Montclair Basins</i>										
	1	CBWCD	1,960	3,400	13,300	13,300	Imported Water Recycled Water	Facility Improvements Optimize the basin bottom geometry Recycled water pipeline and inlet	A C	1 0
<i>Brooks Street Basin</i>										
	1	CBWCD	810	1,200	0	4,000	Imported Water Recycled Water	Facility Improvements Expand MWDSC turnout OC 59 New inlet from San Antonio Creek Emergency outlet to San Antonio Creek Recycled water pipeline and inlet Optimize the basin bottom geometry	C A A C A	0 1 1 0 1
<i>Grove Basin</i>										
	1	SBCFCD	300	300	0	0		Facility Improvements Optimize the basin bottom geometry	A	1
<i>Seventh and Eighth Street Basins</i>										
	1	SBCFCD	0	600	0	2,500	Imported Water Recycled Water	Facility Improvements New MWDSC turnout Pipeline from new MWDSC turnout to west Cuc. Ch Recycled water pipeline and inlet Deepen basin Optimize the basin bottom geometry Modify outlet works to allow conservation storage	B B C A A A	0 0 0 1 1 1
<b>Subtotals</b>			<b>3,960</b>	<b>7,100</b>	<b>13,300</b>	<b>35,800</b>				

Table 1 -- Recharge Projects to Increase Storm Water Recharge and Recharge Capacity of Supplemental Water

Basin MZ	Current Owner	Native Water Conservation		Estimated Supplemental Recharge Capacity <sup>1</sup>		Supplemental Water Sources	Improvements/Activities Description	Do Now (1) or Later (0)	
		Current Estimate (acre-ft/yr)	Goal (acre-ft/yr)	Current Estimate (acre-ft/yr)	Maximum Potential (acre-ft/yr)			Overall Priority (A-highest C-lowest)	
<i>Management Zone 2 and 3 Goals</i>									
			23,300		26,700				
<i>Turner Basin No. 1</i>									
2	SBCFCD	0	500	0	1,500	Imported Water Recycled Water	Facility Improvements New MWDC turnout on Cucamonga Creek New inlet from Cucamonga Creek Misc. site improvements (grading, internal hydraulics, etc.) Recycled water pipeline and inlet Deepen basin to create conservation pool Optimize the basin bottom geometry	B A A C A A	0 1 1 0 1 1
<i>Turner Basin No. 2</i>									
2	SBCFCD	0	500	0	1,500	Imported Water Recycled Water	Facility Improvements New MWDC turnout on Deer Creek New inlet from Deer Creek Misc. site improvements (grading, internal hydraulics, etc.) Recycled water pipeline and inlet Deepen basin to create conservation pool Optimize the basin bottom geometry	B A A C A A	0 1 1 0 1 1
<i>Ely Basins</i>									
2	SBCFCD 1&2 CBWCD 3	2,750	2,800	500	4,000	Imported Water Recycled Water	Facility Improvements New MWDC turnout New pipeline from new MWDC turnout to west Cuc. Ch Recycled water pipeline and inlet Optimize the basin bottom geometry Modify outlet works to allow conservation storage	B B A A A	0 0 1 1 1
<i>Expansion of Lower Day Basin</i>									
2	SBCFCD	0	500	0	8,000	Imported Water Recycled Water	Facility Improvements Expand MWDC turnout CB 15T New inlet pipeline to connect to MWDC turnout Deepening basin Recycled water pipeline and inlet Optimize the basin bottom geometry Modify outlet works to allow conservation storage	B B C C A A	0 0 0 0 1 1
<i>Wineville Basin</i>									
3	SBCFCD	1,780	2,600	0	9,300	Imported Water Recycled Water	Facility Improvements Expand MWDC turnout CB 15T New inlet pipeline to connect turnout to Day Creek Recycled water pipeline and inlet Optimize the basin bottom geometry Modify outlet works to allow conservation storage	A A A A A	1 1 1 1 1
<i>Riverside Basin</i>									
3	SBCFCD	1,400	2,600	0	7,700	Imported Water Recycled Water	Facility Improvements Expand MWDC turnout CB 15T New inlet pipeline to connect turnout to Day Creek Recycled water pipeline and inlet Optimize the basin bottom geometry Modify outlet works to allow conservation storage	A A A A A	1 1 1 1 1

Table 1 -- Recharge Projects to Increase Storm Water Recharge and Recharge Capacity of Supplemental Water

Basin	MZ	Current Owner	Native Water Conservation		Estimated Supplemental Recharge Capacity <sup>1</sup>		Supplemental Water Sources	Improvements/Activities Description	Do Now (1) or Later (0)	
			Current Estimate (acre-ft/yr)	Goal (acre-ft/yr)	Current Estimate (acre-ft/yr)	Maximum Potential (acre-ft/yr)			Overall Priority (A-highest C-lowest)	
<b>Expansion of Etiwanda Conservation Area (joint use of Etiwanda Debris Basin)</b>										
2	SBCFCD	Private Parties	1,050	3,300	6,300	22,000	Imported Water Recycled Water	Acquire Market property Facility Improvements Expand MWDSC turnout CB 14T Deepening and expansion of SBCFCD debris basin Recycled water pipeline and inlet Optimize the basin bottom geometry Modify outlet works to allow conservation storage	B A C A A	0 1 0 1 1
<b>Improvements to Victoria Basin</b>										
2	SBCFCD		0	500	0	4,000	Imported Water Recycled Water	Facility Improvements Expand MWDSC turnout CB 14T Recycled water pipeline and inlet New inlet from Etiwanda Creek Optimize the basin bottom geometry Modify outlet works to allow conservation storage	B C A A A	0 0 1 1 1
<b>Improvements to San Sevaine No.'s 1 through 3</b>										
2	SBCFCD		2,790	4,500	9,200	10,600	Imported Water Recycled Water	Facility Improvements Recycled water pipeline and inlet Optimize the basin bottom geometry	C B	0 0
<b>Improvements to San Sevaine No.'s 4 and 5</b>										
2	SBCFCD		80	500	0	19,400	Imported Water Recycled Water	Potential improvements Expand MWDSC turnout CB 13T New inlet pipeline to connect to MWDSC turnout Recycled water pipeline and inlet Deepen basin to create conservation pool Optimize the basin bottom geometry	B B C B B	0 0 0 0 0
<b>Banana Basin</b>										
3	SBCFCD		0	400	0	500	Imported Water Recycled Water	Potential improvements Expand MWDSC turnout CB 13T Construct inlet in San Sevaine Creek and pipeline to convey MWDSC water to Banana Basin Recycled water pipeline and inlet Deepen basin to create conservation pool Optimize the basin bottom geometry Modify outlet works to allow conservation storage	A A C A A A	0 0 1 1 1
<b>Hickory Basin</b>										
2	SBCFCD		0	500	0	1,500	Imported Water Recycled Water	Facility Improvements Expand MWDSC turnout CB 13T Construct inlet in San Sevaine Creek and pipeline to convey MWDSC water to Hickory Basin Recycled water pipeline and inlet Deepen basin to create conservation pool Optimize the basin bottom geometry Modify outlet works to allow conservation storage	B B B A A A	0 0 1 1 1

Table 1 – Recharge Projects to Increase Storm Water Recharge and Recharge Capacity of Supplemental Water

Basin	MZ	Current Owner	Native Water Conservation		Estimated Supplemental Recharge Capacity <sup>1</sup>		Supplemental Water Sources	Improvements/Activities Description	Do Now (1) or Later (0)	
			Current Estimate (acre-ft/yr)	Goal (acre-ft/yr)	Current Estimate (acre-ft/yr)	Maximum Potential (acre-ft/yr)			Overall Priority (A-highest C-lowest)	
<b>Improvements to the Etiwanda Percolation Ponds</b>										
	3	SBCFCD	0	500	0	4,000	Imported Water Recycled Water	Facility Improvements Construct new MWDSC turnout and pipeline to Etiwanda percolation basins. Pipeline to route MWDSC water around site New outlet to Old Etiwanda Creek (to Wineville Basin) Misc. site improvements (grading, internal hydraulics, etc.) Recycled water pipeline and inlet Optimize the basin bottom geometry	A A A A A A	1 1 1 1 1 1
<b>Jurupa Basin</b>										
	3	SBCFCD	0	3,000	0	4,000	Imported Water Recycled Water	Facility Improvements Expand MWDSC turnout CB 13T and/or CB 14T Optimize the basin bottom geometry	A A	1 1
<b>IEUA RP3 Ponds</b>										
	3	IEUA	0	0	0	4,000	Imported Water	Facility Improvements Expand MWDSC turnout CB 13T and/or CB 14T Construct inlet in San Sevaine Creek and pipeline to convey MWDSC water to RP3 Optimize the basin bottom geometry	A A A	0 0 0
<b>Declez Basin</b>										
	3	SBCFCD	0	600	0	1,000	Imported Water	Expand MWDSC turnout CB 13T and/or CB 14T Construct inlet in San Sevaine Creek and pipeline to convey MWDSC water to Declez Basin Modify outlet works to allow conservation storage Deepen basin to create conservation pool Optimize the basin bottom geometry	A B A A A	0 0 1 1 1
<b>Total All Management Zones</b>				<u>30,400</u>	<u>29,300</u>	<u>138,800</u>				
<b>Subtotal MZ 2 and MZ 3</b>				<u>23,300</u>	<u>16,000</u>	<u>103,000</u>				

Projects completed with Prop 13 money will accomplish the following:

<b>Management Zone 1</b>			
Goals		<u>7,100</u>	<u>23,000</u>
Current		<u>3,960</u>	<u>13,300</u>
After Improvement		<u>7,100</u>	<u>29,300</u>
<b>Management Zone 2</b>			
Goals		<u>13,100</u>	<u>4,000</u>
Current		<u>6,670</u>	<u>16,000</u>
After Improvement		<u>13,100</u>	<u>16,000</u>
<b>Management Zone 3</b>			
Goals		<u>9,700</u>	<u>29,000</u>
Current		<u>3,180</u>	<u>0</u>
After Improvement		<u>9,200</u>	<u>21,000</u>
<b>Total Increase in Recharge</b>		<u>15,590</u>	<u>37,000</u>

Note 1 – annual average recharge capacity assumes recharge water available for the months of October through April. Basic data for estimates is from Table 4-5 of the P1 RMP (Wildermuth, 1998), some with modification.

**Table 2**  
**Regional Water Supply Plan for the OBMP<sup>1</sup>**  
 (acre-ft/yr)

Purveyor Source	Year				
	2000	2005	2010	2015	2020
<i>City of Chino</i>					
Chino Basin Wells	10,000	10,000	10,000	10,000	10,000
Nitrate Removal Plant (Chino Groundwater)	0	0	0	0	0
OBMP Desalter No. I	1,680	3,360	4,420	5,490	6,550
WFA Treatment Plant	4,020	2,640	2,830	3,010	3,200
Reclaimed Water	100	1,050	1,050	1,050	1,050
<b>Total Supply</b>	<b>15,800</b>	<b>17,050</b>	<b>18,300</b>	<b>19,550</b>	<b>20,800</b>
<b>Total Demand</b>	<b>15,800</b>	<b>17,050</b>	<b>18,300</b>	<b>19,550</b>	<b>20,800</b>
<i>City of Chino Hills</i>					
Chino Basin Wells	3,610	3,610	3,610	3,610	3,610
OBMP Desalter No. I	1,120	7,540	7,540	7,540	7,540
Reclaimed Water	400	1,020	1,020	1,815	2,610
WFA Treatment Plant	0	0	0	0	0
MVWD Supply Chino GW	12,510	6,930	8,500	9,385	9,480
<b>Total Supply</b>	<b>17,640</b>	<b>19,100</b>	<b>20,670</b>	<b>22,350</b>	<b>23,240</b>
<b>Total Demand</b>	<b>17,640</b>	<b>19,100</b>	<b>20,670</b>	<b>22,350</b>	<b>23,240</b>
<i>City of Norco</i>					
Chino Basin Wells	0	0	0	0	0
City of Corona	220	0	0	0	0
Temescal Basin Groundwater	5,880	5,870	5,560	5,070	4,650
Supply from JCSD	900	0	0	0	0
OBMP Desalter No. II	0	1,530	2,140	3,330	4,350
<b>Total Supply</b>	<b>7,000</b>	<b>7,400</b>	<b>7,700</b>	<b>8,400</b>	<b>9,000</b>
<b>Total Demand</b>	<b>7,000</b>	<b>7,400</b>	<b>7,700</b>	<b>8,400</b>	<b>9,000</b>
<i>City of Ontario</i>					
Chino Basin Wells	34,720	32,950	32,950	32,950	32,950
WFA Treatment Plant	6,590	7,660	10,020	17,950	20,630
Reclaimed Water	840	840	1,680	2,520	3,360
Supply from SAWC (Chino GW)	850	850	850	850	850
OBMP Desalter No. II	0	5,000	5,000	8,530	12,710
<b>Total Supply</b>	<b>43,000</b>	<b>47,300</b>	<b>50,500</b>	<b>62,800</b>	<b>70,500</b>
<b>Total Demand</b>	<b>41,530</b>	<b>45,830</b>	<b>49,030</b>	<b>61,330</b>	<b>69,030</b>
Supply to Sunkist (Chino GW)	1,470	1,470	1,470	1,470	1,470

**Table 2**  
**Regional Water Supply Plan for the OBMP<sup>1</sup>**  
 (acre-ft/yr)

Purveyor Source	Year				
	2000	2005	2010	2015	2020
<i>City of Pomona</i>					
Chino Basin Wells	5,220	5,220	5,220	5,220	5,220
Pomona Nitrate Treatment Plant (Chino GW)	13,880	13,880	13,880	13,880	13,880
Other Groundwater Basins	5,160	5,160	5,160	5,160	5,160
Reclaimed Water	7,000	7,000	7,000	7,000	7,000
Pedley Treatment Plant	3,800	3,800	3,800	3,800	3,800
TVMWD Weymouth Treatment Plant	2,140	3,380	4,520	5,840	7,044
Total Supply	37,200	38,440	39,580	40,900	42,104
Total Demand	37,200	38,440	39,580	40,900	42,104
<i>City of Upland</i>					
Chino Basin Wells	2,429	2,430	3,410	3,070	3,050
Supply from SAWC (non-Chino GW)	4,920	4,520	4,520	4,520	4,520
Supply from SAWC (San Antonio Canyon TP)	2,411	2,390	2,390	2,690	2,690
Supply from WECWC (Chino GW)	0	1,420	1,440	1,480	1,500
Supply from WECWC (other GW basins)	4,650	4,650	4,650	4,650	4,650
WFA Treatment Plant	7,590	7,590	7,590	7,590	7,590
Total Supply	22,000	23,000	24,000	24,000	24,000
Total Demand	22,000	23,000	24,000	24,000	24,000
<i>Cucamonga County Water District</i>					
Chino Basin Wells	8,000	10,160	10,160	10,160	10,160
Other Groundwater Basins	12,650	11,180	12,390	12,390	12,390
Reclaimed Water	0	0	0	2,402	4,804
CCWD Bridge Water Treatment Plant	1,000	1,000	1,000	1,000	1,000
CCWD Lloyd Michael Treatment Plant	21,710	25,550	28,860	30,978	33,096
CCWD Royer-Nesbit Treatment Plant	6,000	6,000	6,000	6,000	6,000
Deer Creek	550	550	550	550	550
Total Supply	49,910	54,440	58,960	63,480	68,000
Total Demand	49,910	54,440	58,960	63,480	68,000
<i>Fontana Water Company</i>					
Chino Basin Wells	16,700	22,825	16,050	20,375	24,800
Other Groundwater Basins	12,700	12,700	12,700	12,700	12,700
Reclaimed Water	0	0	0	1,685	3,370
Fontana Water Treatment Plant	0	0	18,600	16,915	15,230
Sandhill Treatment Plant	7,400	7,400	0	0	0
Total Supply	36,800	42,925	47,350	51,675	56,100
Total Demand	35,100	41,200	45,600	49,900	54,300
Supply to California Steel	1,700	1,725	1,750	1,775	1,800



**Table 2**  
**Regional Water Supply Plan for the OBMP<sup>1</sup>**  
 (acre-ft/yr)

Purveyor Source	Year				
	2000	2005	2010	2015	2020
<i>Jurupa Community Services District<sup>2</sup></i>					
Chino Basin Wells (Potable)	14,425	11,275	12,885	13,265	13,625
Chino Basin Wells (Non-potable)	50	250	450	650	850
Other Groundwater Basins	500	500	500	500	500
OBMP Desalter No. I	1,800	0	0	0	0
OBMP Desalter No. II	0	5,000	5,790	7,810	9,850
Total Supply	16,775	17,025	19,625	22,225	24,825
Total Demand	14,200	17,000	19,600	22,200	24,800
Supply to Mira Loma SC	25	25	25	25	25
Supply to Norco	900	0	0	0	0
Supply to Swan Lake	350	0	0	0	0
Supply to SARWC	1,300	0	0	0	0
Subtotal	2,575	25	25	25	25
<i>Mira Loma SC</i>					
Chino Basin Wells	0	0	0	0	0
Supply from JCSD	25	25	25	25	25
Total Supply	25	25	25	25	25
Total Demand	25	25	25	25	25
<i>Santa Ana River Water Company<sup>2</sup></i>					
Chino Basin Wells	0	0	0	0	0
Almost Chino Basin Wells (along SAR outside legal bndy)	700	790	660	490	320
Supply from JCSD	1,300	0	0	0	0
OBMP Desalter No. II (see note below)	0	1,300	1,460	1,650	1,850
Total Supply	2,000	2,090	2,120	2,140	2,170
Total Demand	2,000	2,090	2,120	2,140	2,170
Note -- The Santa Ana Water Company may receive Desalter II water through either a direct connection paid for by the Company or through an interconnection with Jurupa Community Services District.					
<i>Swan Lake</i>					
Chino Basin Wells	0	0	0	0	0
Supply from JCSD	350	0	0	0	0
OBMP Desalter No. II	0	350	350	350	350
Total Supply	350	350	350	350	350
Total Demand	350	350	350	350	350
<i>Marygold Mutual Water Company</i>					
Baseline Feeder	1,450	1,580	1,620	1,660	1,700
Total Supply	1,450	1,580	1,620	1,660	1,700
Total Demand	1,450	1,580	1,620	1,660	1,700

**Table 2**  
**Regional Water Supply Plan for the OBMP<sup>i</sup>**  
 (acre-ft/yr)

Purveyor Source	Year				
	2000	2005	2010	2015	2020
<i>Monte Vista Water District</i>					
Chino Basin Wells	26,670	21,090	22,660	23,545	23,640
WFA Treatment Plant	0	0	0	0	0
Total Supply	26,670	21,090	22,660	23,545	23,640
Total Demand	14,160	14,160	14,160	14,160	14,160
Supply to Chino Hills (Chino GW)	12,510	6,930	8,500	9,385	9,480
<i>San Antonio Water Company -- Domestic</i>					
Chino Basin Wells	70	1,050	1,070	1,090	1,110
Other Groundwater Basins	400	400	400	400	400
San Antonio Canyon	0	0	0	0	0
San Antonio Tunnel	1,020	1,020	1,020	1,020	1,020
Total Supply	1,490	2,470	2,490	2,510	2,530
Total Demand	640	1,620	1,640	1,660	1,680
Supply to Ontario (Chino GW)	850	850	850	850	850
<i>Southern California Water Company</i>					
Chino Basin Wells	2,160	2,160	2,160	2,160	2,160
Other Groundwater Basins	4,950	4,490	4,850	4,850	4,850
TVMWD -- Miramar Water Treatment Plant	7,090	8,300	8,670	8,670	8,670
Total Supply	14,200	14,950	15,680	15,680	15,680
Total Demand	14,200	14,950	15,680	15,680	15,680
<i>West End Consolidated Water Company</i>					
Chino Basin Wells	0	1,420	1,440	1,480	1,500
Other Groundwater Basins	4,650	4,650	4,650	4,650	4,650
Total Supply	4,650	6,070	6,090	6,130	6,150
Total Demand	0	0	0	0	0
Supply to Upland	4,650	6,070	6,090	6,130	6,150
<i>West San Bernardino County Water District</i>					
Other Groundwater Basins	5,330	6,835	9,520	9,510	9,510
SBVMWD Baseline Feeder	800	1,000	1,380	1,390	1,390
Total Supply	6,130	7,835	10,900	10,900	10,900
Total Demand	6,130	7,835	10,900	10,900	10,900

**Table 2**  
**Regional Water Supply Plan for the OBMP<sup>1</sup>**  
 (acre-ft/yr)

Purveyor Source	Year				
	2000	2005	2010	2015	2020
<i>Ameron</i>					
Chino Basin Wells	9	9	9	9	9
Total Supply	9	9	9	9	9
Total Demand	9	9	9	9	9
<i>San Bernardino County Division of Airports</i>					
Chino Basin Wells (Potable (Domestic))	300	300	300	300	300
Total Supply	300	300	300	300	300
Total Demand	300	300	300	300	300
<i>Reliant Energy</i>					
Chino Basin Wells	800	0	0	0	0
Reclaimed Water	0	3,300	3,300	3,300	3,300
IEUA – MWD Water from CRA	2,500	0	0	0	0
Total Supply	3,300	3,300	3,300	3,300	3,300
Total Demand	3,300	3,300	3,300	3,300	3,300
<i>Sunkist</i>					
Chino Basin Wells	0	0	0	0	0
Supply from Ontario (Chino GW)	1,470	1,470	1,470	1,470	1,470
Total Supply	1,470	1,470	1,470	1,470	1,470
Total Demand	1,470	1,470	1,470	1,470	1,470
<i>Kaiser Ventures</i>					
Chino Basin Wells	670	670	670	670	670
Total Supply	670	670	670	670	670
Total Demand	670	670	670	670	670
<i>San Bernardino County Parks Department</i>					
Chino Basin Wells	75	75	75	75	75
Total Supply	75	75	75	75	75
Total Demand	75	75	75	75	75
<i>Monte Vista Irrigation Company</i>					
Chino Basin Wells	0	0	0	0	0
Total Supply	0	0	0	0	0
Total Demand	0	0	0	0	0
<i>California Steel</i>					
Chino Basin Wells	0	0	0	0	0
Fontana Water Company	1,700	1,725	1,750	1,775	1,800
Total Supply	1,700	1,725	1,750	1,775	1,800
Total Demand	1,700	1,725	1,750	1,775	1,800

**Table 2**  
**Regional Water Supply Plan for the OBMP<sup>1</sup>**  
 (acre-ft/yr)

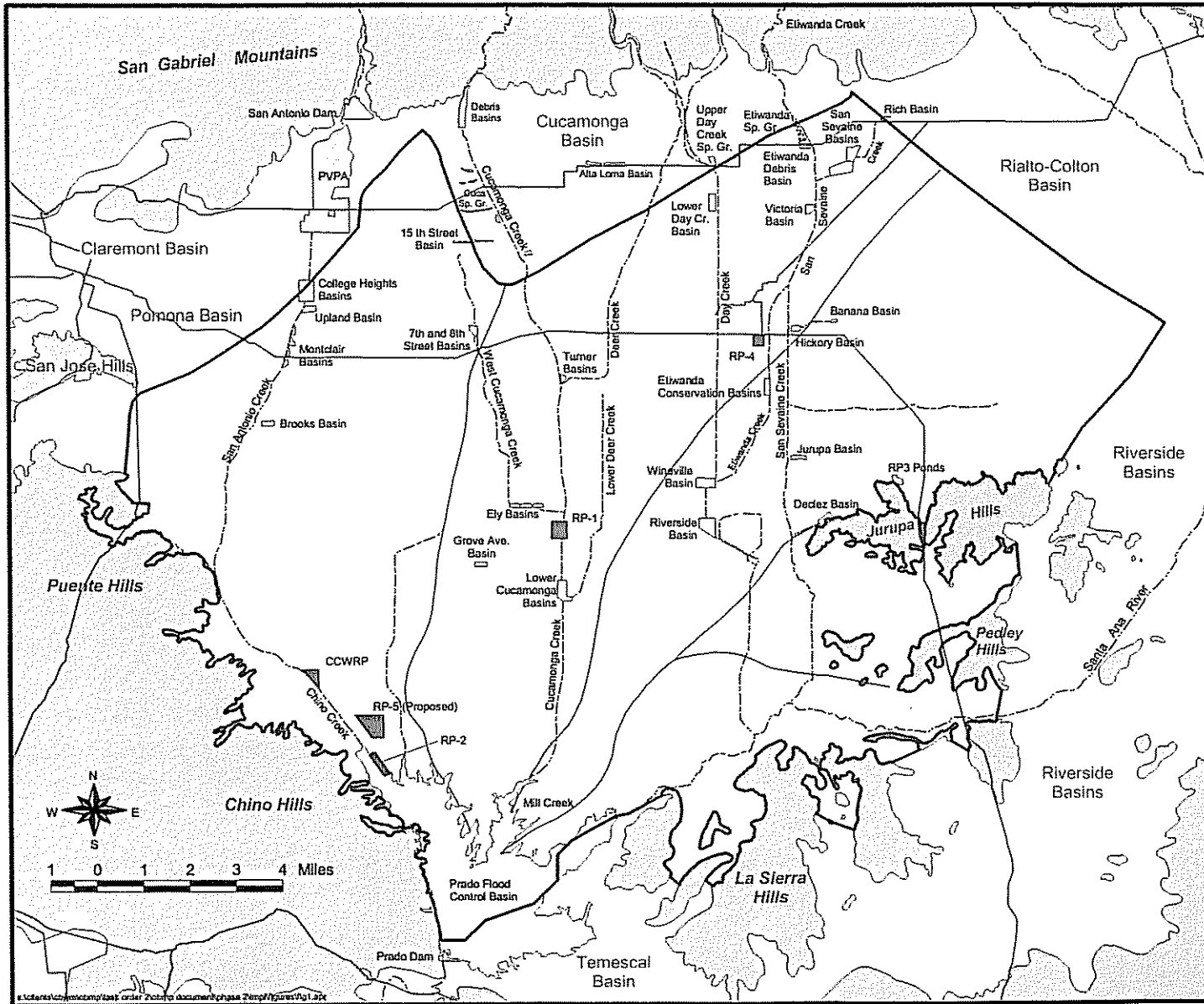
Purveyor Source	Year				
	2000	2005	2010	2015	2020
<b>Totals By Source Type and Pool</b>					
Pool 1 Overlying Agricultural Pool (groundwater)	49,100	39,975	30,850	21,725	10,000
Pool 2 Overlying Non-Agricultural Pool					
Chino Basin Groundwater	3,624	2,474	2,474	2,474	2,474
OBMP Desalter No. II	0	350	350	350	350
Other Local Supplies	0	0	0	0	0
Imported Water	2,500	0	0	0	0
Recycled Water	0	3,300	3,300	3,300	3,300
Total Pool 2	6,124	6,124	6,124	6,124	6,124
Pool 3 Appropriative Pool					
Chino Basin Groundwater	137,634	138,370	135,995	141,505	146,605
OBMP Desalter No. II	0	12,830	14,390	21,320	28,760
OBMP Desalter No. I	4,600	10,900	11,960	13,030	14,090
Other Local Supplies	84,141	83,485	80,320	80,000	79,450
Imported Water					
WFA Treatment Plant	18,200	17,890	20,440	28,550	31,420
CCWD Lloyd Michael TP	21,710	25,550	28,860	30,978	33,096
CCWD Royer Nesbit	3,000	3,000	3,000	3,000	3,000
Other	11,730	11,680	31,790	31,425	30,944
Subtotal	49,940	56,120	82,470	92,343	96,850
Recycled Water	8,340	9,910	10,750	16,472	22,194
Total Pool 3	284,655	311,615	335,885	364,670	387,949
Total All Pools	339,879	357,714	372,859	392,519	404,073
<b>Total Water Produced By Desalter Projects</b>					
<i>OBMP Projects</i>					
OBMP Desalter No. II	0	13,180	14,740	21,670	29,110
OBMP Desalter No. II Raw Water Supply	0	15,506	17,341	25,494	34,247
OBMP Desalter No. I	4,600	10,900	11,960	13,030	14,090
OBMP Desalter No. I Raw Water Supply	5,292	12,540	13,759	14,990	16,210
<i>Pomona Ion Exchange</i>					
Production	13,880	13,880	13,880	13,880	13,880
Raw Water Supply	14,309	14,309	14,309	14,309	14,309
<b>Total Chino Basin Groundwater Production Summary</b>					
Pool 1	49,100	39,975	30,850	21,725	10,000
Pool 2	3,624	2,824	2,824	2,824	2,824
Pool 3	143,355	166,495	167,175	182,069	197,141
Total	196,079	209,294	200,849	206,618	209,965

Note 1 -- Some of the water supply plans for agencies taking OBMP desalter water are different than the plans shown in the "Revised Draft Water Supply Plan, Phase 1 Desalting Project Facilities Report, June 2000. These difference are minor and will be reconciled in July 2000.

Note 2 -- "Jurupa Community Services District" means Jurupa Community Services District and the Santa Ana River Water Company individually. Subject to provisions of the Peace Agreement, the design and delivery obligations for the Chino II Desalter set forth in Section 7.3 regarding Jurupa Community Services District include both Jurupa Community Services District and the Santa Ana River Water Company.

**Table 3**  
**Production and Salt Removal Capacity of Chino Basin Desalters**

Year	Product Water Capacity (mgd)			Desalter groundwater Production (acre-ft/yr)	Salt Removal Capacity (tons)			
	OBMP Desalters No I	No II	Total		OBMP Desalters No I	No II	Total	Fraction of Ultimate Capacity
2000	4.7	0.0	4.7	5,292	5,436	0	5,436	7%
2001	8.0	0.0	8.0	8,960	9,205	0	9,205	12%
2002	8.0	0.0	8.0	8,960	9,205	0	9,205	12%
2003	10.0	10.0	20.0	25,372	12,881	22,697	35,578	46%
2004	10.0	12.0	22.0	27,905	12,881	27,176	40,057	52%
2005	10.0	12.0	22.0	27,905	12,881	27,176	40,057	52%
2006	12.0	12.0	24.0	29,124	14,134	27,176	41,309	53%
2007	12.0	12.0	24.0	29,124	14,134	27,176	41,309	53%
2008	12.0	14.0	26.0	31,100	14,134	30,755	44,889	58%
2009	12.0	14.0	26.0	31,100	14,134	30,755	44,889	58%
2010	12.0	14.0	26.0	31,100	14,134	30,755	44,889	58%
2011	12.0	14.0	26.0	31,100	14,134	30,755	44,889	58%
2012	12.0	14.0	26.0	31,100	14,134	30,755	44,889	58%
2013	12.0	20.0	32.0	40,484	14,134	45,215	59,348	77%
2014	12.0	20.0	32.0	40,484	14,134	45,215	59,348	77%
2015	12.0	20.0	32.0	40,484	14,134	45,215	59,348	77%
2016	14.0	20.0	34.0	41,704	16,651	45,215	61,865	80%
2017	14.0	26.0	40.0	50,457	16,651	60,573	77,224	100%
2018	14.0	26.0	40.0	50,457	16,651	60,573	77,224	100%
2019	14.0	26.0	40.0	50,457	16,651	60,573	77,224	100%
2020	14.0	26.0	40.0	50,457	16,651	60,573	77,224	100%
<b>21-Year Totals</b>								
Water Production (acre-ft/yr)				683,128				
Salt Removal (tons)					287,080	708,326	995,406	

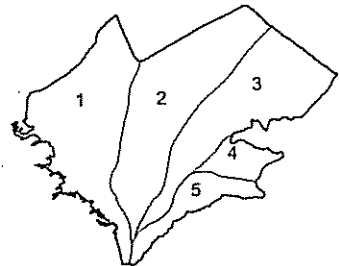


**Optimum Basin Management Program**  
*Chino Basin Watermaster*

**Legend**

- Flood Control / Conservation Basins
- IEUA POTW's
- Prado Flood Control Basin
- Hydrologic Chino Basin
- Bedrock
- MWD Pipeline
- Stream System
- Management Boundaries
- Fault
  - Dashed Where Approximate
  - Dotted Where Concealed
  - Questioned Where Uncertain
  - Large Dots Where Groundwater Barrier (Suspected Fault)

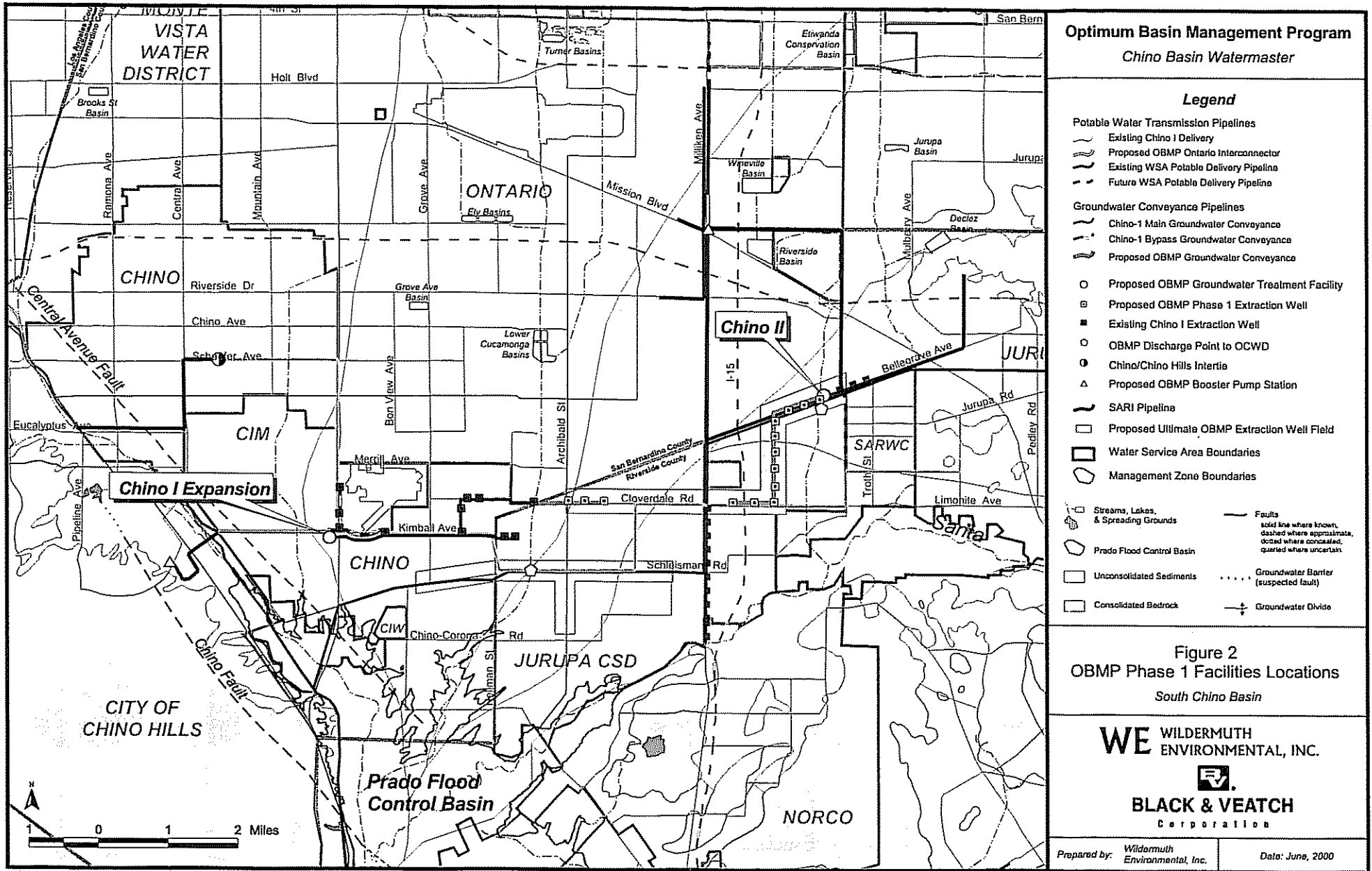
**Management Zone Index Map**



**Figure 1**  
**Location of Existing and Potential Recharge Facilities**  
*Chino Basin*

**WE** WILDERMUTH ENVIRONMENTAL, INC.

Date: June, 2000



# EXHIBIT C



**MEMORANDUM OF AGREEMENT  
FOR RECHARGE IN THE  
CHINO BASIN**

**THIS AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of June, 2000, between \_\_\_\_\_ and Watermaster ("the Parties") regarding recharge of water into the Chino Groundwater Basin.

**RECITALS**

**WHEREAS**, a Judgment was entered in San Bernardino County Superior Court Case No. RCV 51050 that adjudicated all rights to groundwater and storage capacity within the Chino Basin and established a physical solution; and

**WHEREAS**, Watermaster has the express powers and duties as provided in the Judgment or "hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction" including the power to ensure that recharge of Supplemental Water does not result in Material Physical Injury to any Producer or the Basin; and

**WHEREAS**, Paragraph 41 of the Judgment provides that "Watermaster, with the advice of the Advisory and Pool Committees" has "discretionary powers in order to develop an optimum basin management program (OBMP) for the Chino Basin"; and

**WHEREAS**, Watermaster desires to facilitate and arrange for Recharge of water into the Chino Basin where and when it is prudent to do so under fair and reasonable terms and conditions; and

WHEREAS, \_\_\_\_\_ desires to Recharge water into the Chino Basin; and

NOW, THEREFORE, in consideration of the mutual promises specified herein, and for other good and valuable consideration, the Parties agree as follows:

1. No Ownership of Property. Watermaster shall not own real property but may contract for the operation of recharge projects, including but not limited to spreading grounds, injection wells, diversion works on real property.
2. No Material Physical Injury. \_\_\_\_\_ shall Recharge water in a manner so as to not cause Material Physical Injury to any party to the Judgment or the Basin.
3. Location. Any Recharge conducted by \_\_\_\_\_ shall occur at the locations identified in the Site Plan contained in Exhibit "A" attached hereto.
4. Timing. Watermaster shall direct Recharge by \_\_\_\_\_, and \_\_\_\_\_ shall arrange for recharge in accordance with the schedule attached hereto as Exhibit \_\_\_\_.
5. Compensation. In exchange for \_\_\_\_\_ Recharging water at the locations and times requested by Watermaster, \_\_\_\_\_ shall receive \_\_\_\_\_ per annum [per acre foot].
6. Annual Accounting. Watermaster shall provide an annual accounting of the amount of Recharge conducted pursuant to this Agreement.
7. Term. The term of this Agreement shall be \_\_\_\_ years.

# **First Amendment to Peace Agreement**

## **FIRST AMENDMENT TO PEACE AGREEMENT CHINO BASIN**

THIS FIRST AMENDMENT TO PEACE AGREEMENT ("Agreement") is dated the 2<sup>nd</sup> of September 2004 regarding the Chino Groundwater Basin.

### **RECITALS**

A. The Parties entered into that certain "Peace Agreement" dated June 29, 2000. The Peace Agreement was approved by the Court in San Bernardino Superior Court Case No. RCV 51010.

B. Section 5.5 of the Peace Agreement provided for Watermaster assignment of "Salt Credits." Certain parties to the Peace Agreement contend that Salt Credits were intended as a benefit to compensate non-discharging Appropriators for their obligation under Section 7.5(b) of the Peace Agreement to provide their share of the storm flow Recharge component of New Yield for Desalter Replenishment. The storm flow Recharge component of New Yield has been established by Watermaster at 12,000 acre-feet per annum.

C. Pursuant to that contention, Monte Vista Water District brought a "Motion for an Order Compelling Watermaster to Establish a Program to Equitably Allocate Benefits from Water Quality Mitigation Measures Under the Physical Solution" on March 11, 2004.

D. The Parties have agreed that if the obligation to dedicate the storm flow Recharge component of New Yield for Desalter Replenishment is eliminated from the Peace Agreement, then Salt Credits can be eliminated from the Peace Agreement. The Parties intend that the storm flow Recharge component of New Yield will remain assigned to the individual Appropriators as a component of Safe Yield, and will not be independently dedicated to Desalter Replenishment, even if it subsequently becomes determined to be part of the Safe Yield in accordance with Section 4.5 of the Peace Agreement and Sections 6.2 and 6.5 of the Watermaster Rules and Regulations.

E. Except as set forth herein, the Parties to the Peace Agreement have agreed that Desalter Replenishment will continue to be provided for as set forth in Section 7.5 of the Peace Agreement, as amended, with Desalter Replenishment being provided from the following sources in order of priority: (a) the 25,000 acre-feet of Kaiser water; (b) New Yield other than the 12,000 acre-feet of storm flow Recharge; (c) Safe Yield and (d) Additional Replenishment Water purchased by Watermaster.

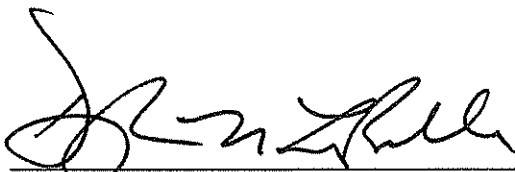
1. **Salt Credits Deleted.** Sections 1.1(rr) and 5.5 of the Peace Agreement are hereby deleted.

2. **Stormwater Component of New Yield Dedicated to Appropriators.**  
The 12,000 acre-feet of storm flow Recharge determined by Watermaster to be part of New Yield shall be allocated to the Appropriators according to their percentages of Safe Yield under the Judgment. Notwithstanding section 7.5(c) of the Peace Agreement, those amounts will continue to be dedicated in those percentages to the Appropriators if that storm flow Recharge is subsequently determined to be Safe Yield. Section 7.5(b) of the Peace Agreement is hereby amended to read:

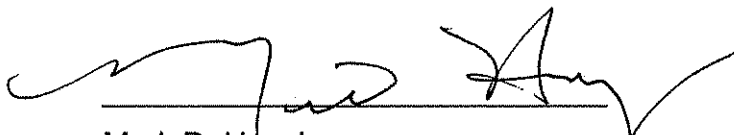
"New Yield, other than the storm flow Recharge component thereof, unless the Water Produced and treated by the Desalters is dedicated by a purchaser of the desalted water to offset the price of desalted water to the extent of the dedication."

3. **Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect and nothing in this First Amendment shall be construed to require Watermaster to levy the Replenishment Assessment contemplated by subdivision(d) of Section 7.5 thereof separately against the Parties that receive desalted water

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

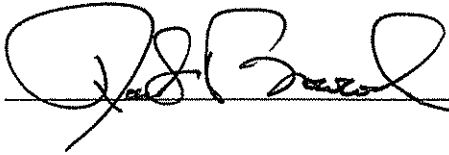
  
\_\_\_\_\_  
Douglas N. La Belle  
City Manager

9/28/04  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mark D. Hensley  
City Attorney

9/28/04  
\_\_\_\_\_  
Date

DATED: NON-AGRICULTURAL POOL

BY:  \_\_\_\_\_

DATED: INLAND EMPIRE UTILITY  
AGENCY

9/15/04

BY:  \_\_\_\_\_

DATED: THREE VALLEYS MUNICIPAL  
WATER DISTRICT

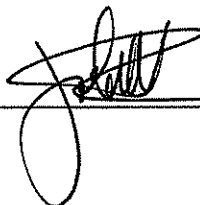
BY:  \_\_\_\_\_

DATED: KAISER VENTURES, INC.

BY: \_\_\_\_\_

DATED: WESTERN MUNICIPAL  
WATER DISTRICT

10/28/04

BY:  \_\_\_\_\_

[Signatures continued on following pages]

10/6/04

DATED: CITY OF UPLAND

BY: \_\_\_\_\_

DATED: STATE OF CALIFORNIA

BY: \_\_\_\_\_

DATED: CITY OF CHINO

BY: \_\_\_\_\_

DATED: CUCAMONGA COUNTY WATER DISTRICT

BY: \_\_\_\_\_

DATED: 10/6/04 MONTE VISTA WATER DISTRICT

BY: Maod. K

[Signatures continued on following pages]

DATED:

CITY OF UPLAND

BY: \_\_\_\_\_

DATED:

STATE OF CALIFORNIA

BY: \_\_\_\_\_

DATED:

CITY OF CHINO

BY: \_\_\_\_\_

DATED:

October 26, 2004

CUCAMONGA VALLEY WATER  
DISTRICT

BY: Henry J. Stoy

President of Board of Directors

DATED:

MONTE VISTA WATER  
DISTRICT

BY: \_\_\_\_\_

[Signatures continued on following pages]



DATED:

CITY OF UPLAND

BY: John V. Pomieiski

DATED:

STATE OF CALIFORNIA

BY: \_\_\_\_\_

DATED:

CITY OF CHINO

BY: \_\_\_\_\_

DATED:

CUCAMONGA COUNTY WATER  
DISTRICT

BY: \_\_\_\_\_

DATED:

MONTE VISTA WATER  
DISTRICT

BY: \_\_\_\_\_

[Signatures continued on following pages]

DATED:

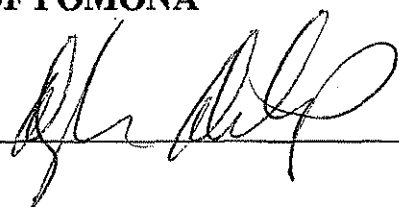
**CITY OF UPLAND**

BY: \_\_\_\_\_

DATED:

**CITY OF POMONA**

10/6/04

BY:  \_\_\_\_\_

DATED:

**CITY OF CHINO**

BY: \_\_\_\_\_

DATED:

**CUCAMONGA COUNTY WATER DISTRICT**

BY: \_\_\_\_\_

DATED:

**MONTE VISTA WATER  
DISTRICT**

BY: \_\_\_\_\_

[Signatures continued on following pages]

NOW THEREFORE, in consideration of the covenants and conditions herein contained, and for other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

### AGREEMENT

1. **Salt Credits Deleted.** Sections 1.1(rr) and 5.5 of the Peace Agreement are hereby deleted.

2. **Stormwater Component of New Yield Dedicated to Appropriators.**


The 12,000 acre-feet of storm flow Recharge determined by Watermaster to be part of New Yield shall be allocated to the Appropriators according to their percentages of Safe Yield under the Judgment. Notwithstanding section 7.5(c) of the Peace Agreement, those amounts will continue to be dedicated in those percentages to the Appropriators if that storm flow Recharge is subsequently determined to be Safe Yield. Section 7.5(b) of the Peace Agreement is hereby amended to read:

" New Yield, other than the storm flow Recharge component thereof, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted water to offset the price of desalted water to the extent of the dedication."

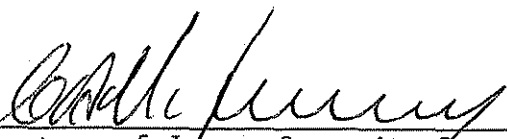
3. **Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect and nothing in this First Amendment shall be construed to require Watermaster to levy the Replenishment Assessment contemplated by subdivision (d) of Section 7.5 thereof separately against the Parties that receive desalted water

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated: October 12, 2004

  
\_\_\_\_\_  
President of Jurupa Community Services  
District Board of Directors

Attest:

  
\_\_\_\_\_  
Secretary of Jurupa Community Services  
District Board of Directors

DATED: CUCAMONGA COUNTY WATER DISTRICT

BY: \_\_\_\_\_

DATED: MONTE VISTA WATER DISTRICT

BY: \_\_\_\_\_

DATED: FONTANA UNION WATER COMPANY

BY: Ronald J. Black

DATED: CITY OF CHINO HILLS

BY: \_\_\_\_\_

DATED: JURUPA COMMUNITY SERVICES DISTRICT

BY: \_\_\_\_\_

DATED: AGRICULTURAL POOL

BY: Patricia Williams

DATED: APPROPRIATIVE POOL

BY: Mike M... ..

DATED: NON-AGRICULTURAL POOL

BY: \_\_\_\_\_

DATED: INLAND EMPIRE UTILITY AGENCY

BY: \_\_\_\_\_

DATED: THREE VALLEYS MUNICIPAL WATER DISTRICT

BY: \_\_\_\_\_

[Signatures continued on following pages]

**DATED:** 9/21/04

**SAN ANTONIO WATER  
COMPANY**

**BY:**

  
General Manager/CEO

**DATED:**

**CHINO BASIN WATER  
CONSERVATION DISTRICT**

**BY:** \_\_\_\_\_

DATED:

**SAN ANTONIO WATER  
COMPANY**

BY: \_\_\_\_\_

DATED:

**CHINO BASIN WATER  
CONSERVATION DISTRICT**

BY: Barnett Kell



DATED:

CITY OF UPLAND

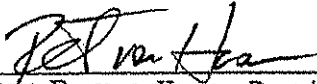
BY: \_\_\_\_\_

DATED:

12/1/2004

STATE OF CALIFORNIA

BY:

  
Peter E. von Haam, Deputy Attorney General

DATED:

CITY OF CHINO

BY: \_\_\_\_\_

DATED:

CUCAMONGA COUNTY WATER  
DISTRICT

BY: \_\_\_\_\_

DATED:

MONTE VISTA WATER  
DISTRICT

BY: \_\_\_\_\_

[Signatures continued on following pages]



AGREEMENT

1. Salt Credits Deleted. Sections 1.1(rr) and 5.5 of the Peace Agreement are hereby deleted.

2. Stormwater Component of New Yield Dedicated to Appropriators

The 12,000 acre-feet of storm flow Recharge determined by Watermaster to be part of New Yield shall be allocated to the Appropriators according to their percentages of Safe Yield under the Judgment. Notwithstanding section 7.5(c) of the Peace Agreement, those amounts will continue to be dedicated in those percentages to the Appropriators if that storm flow Recharge is subsequently determined to be Safe Yield. Section 7.5(b) of the Peace Agreement is hereby amended to read:

“New Yield, other than the storm flow Recharge component thereof, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted water to offset the price of desalted water to the extent of the dedication.”

3. Effect of Amendment. Except as amended hereby, the Peace Agreement remains in full force and effect and nothing in this First Amendment shall be construed to require Watermaster to levy the Replenishment Assessment contemplated by subdivision (d) of Section 7.5 thereof separately against the Parties that receive desalted water

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED: STATE OF CALIFORNIA

BY: \_\_\_\_\_

DATED: CITY OF ONTARIO

BY: *[Signature]*

DATED: CITY OF UPLAND

BY: \_\_\_\_\_

DATED: CITY OF POMONA

BY: \_\_\_\_\_

[Signatures continued on following pages]

DATED: CITY OF CHINO

BY: \_\_\_\_\_

[Signatures continued on following pages]

# **Second Amendment to Peace Agreement**

October 25, 2007

## SECOND AMENDMENT TO PEACE AGREEMENT

THIS SECOND AMENDMENT TO PEACE AGREEMENT (“AGREEMENT”) is dated the 25<sup>th</sup> of October 2007 regarding the Chino Groundwater Basin.

### RECITALS

- A. The Parties entered into that certain “Peace Agreement” dated June 29, 2000. The Peace Agreement was approved by the Court in San Bernardino Superior Court Case No. RCV 51010.
- B. The Parties entered into a First Amendment to the Peace Agreement on September 2nd of 2004 regarding the deletion of Salt Credits and the Stormwater Component of New Yield.

NOW THEREFORE, in consideration of the covenants and conditions herein contained, and for other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

### AGREEMENT

**Section 1. OBMP Credits Modified.** The Peace Agreement § 5.4(d) will be amended to read:

- (d) Watermaster shall adopt reasonable procedures to evaluate requests for OBMP credits against future OBMP Assessments or for reimbursement. Any Producer or party to the Judgment, including but not limited to the State of California, may make application to Watermaster for reimbursement or credit against future OBMP Assessments for any capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating groundwater Production facilities, that carries out the purposes of the OBMP and specifically relates to the prevention of subsidence in the Basin, in advance of construction or that is prospectively dedicated to service of the stated goals of the OBMP. Watermaster shall exercise reasonable discretion in making its determination, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future OBMP Assessments under this section where the Producer or party to the Judgment was otherwise legally compelled to make the improvement.

October 25, 2007

**Section 2. Increase the Limit on Storage of Local Supplemental Water** The current cap of 50,000 acre-feet of Storage of Supplemental Water described in paragraph 5.2(b)(iv) and 5.2(b)(vii) of the Peace Agreement shall be increased from 50,000 to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement paragraph 5.2(b)(v) shall no longer be in effect with regard to such applications.

**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

**DATED:**

**Party:** \_\_\_\_\_

**By:** \_\_\_\_\_

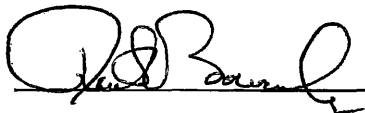
October 25, 2007

**Section 2. Increase the Limit on Storage of Local Supplemental Water** The current cap of 50,000 acre-feet of Storage of Supplemental Water described in paragraph 5.2(b)(iv) and 5.2(b)(vii) of the Peace Agreement shall be increased from 50,000 to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement paragraph 5.2(b)(v) shall no longer be in effect with regard to such applications.

**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

**DATED:**

Party: 

By: April 24, 2008

October 25, 2007

**Section 2. Increase the Limit on Storage of Local Supplemental Water** The current cap of 50,000 acre-feet of Storage of Supplemental Water described in paragraph 5.2(b)(iv) and 5.2(b)(vii) of the Peace Agreement shall be increased from 50,000 to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement paragraph 5.2(b)(v) shall no longer be in effect with regard to such applications.

**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED: 12/11/07

Party: CITY OF UPLAND

By:   
ROBB QUINLEY, CITY MANAGER

October 25, 2007

**Section 2. Increase the Limit on Storage of Local Supplemental Water** The current cap of 50,000 acre-feet of Storage of Supplemental Water described in paragraph 5.2(b)(iv) and 5.2(b)(vii) of the Peace Agreement shall be increased from 50,000 to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement paragraph 5.2(b)(v) shall no longer be in effect with regard to such applications.

**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

Party: CUCAMONGA VALLEY WATER DISTRICT

By: 

October 25, 2007

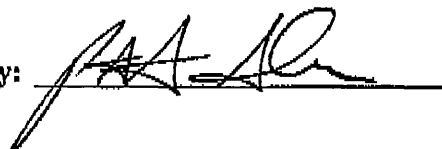
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**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

Party: CITY OF CHINO

By: 

ATTEST:

DATED: 2-21-08

  
Lenna J. Tanner, City Clerk



October 25, 2007

**Section 2. Increase the Limit on Storage of Local Supplemental Water** The current cap of 50,000 acre-feet of Storage of Supplemental Water described in paragraph 5.2(b)(iv) and 5.2(b)(vii) of the Peace Agreement shall be increased from 50,000 to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement paragraph 5.2(b)(v) shall no longer be in effect with regard to such applications.

**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED: Dec. 19<sup>th</sup> 2007

Party: Ag. Pool - Watermaster.

By: [Signature]

October 25, 2007

**Section 2. Increase the Limit on Storage of Local Supplemental Water** The current cap of 50,000 acre-feet of Storage of Supplemental Water described in paragraph 5.2(b)(iv) and 5.2(b)(vii) of the Peace Agreement shall be increased from 50,000 to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement paragraph 5.2(b)(v) shall no longer be in effect with regard to such applications.

**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED: 12/12/07

Party: WEST END CONSOLIDATED WATER Co.

By: Tom R. Thomas  
TOM R. THOMAS

October 25, 2007

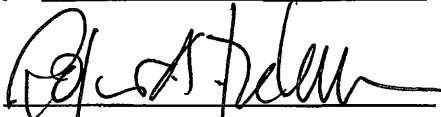
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**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

**DATED:** December 7, 2007

**Party:** FONTANA UNION WATER COMPANY

**By:**   
Robert A DeLoach, President

October 25, 2007

**Section 2. Increase the Limit on Storage of Local Supplemental Water** The current cap of 50,000 acre-feet of Storage of Supplemental Water described in paragraph 5.2(b)(iv) and 5.2(b)(vii) of the Peace Agreement shall be increased from 50,000 to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement paragraph 5.2(b)(v) shall no longer be in effect with regard to such applications.

**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

Party: Cucamonga Valley WD  
By: [Signature]

October 25, 2007

By: \_\_\_\_\_

**DATED:**

**INLAND EMPIRE UTILITIES  
AGENCY**

By: \_\_\_\_\_

**DATED:**

**CUCAMONGA VALLEY WATER  
DISTRICT**

By: \_\_\_\_\_

**DATED:**

**MONTE VISTA WATER DISTRICT**

By: \_\_\_\_\_

**DATED:**

**FONTANA UNION WATER  
COMPANY**

By: \_\_\_\_\_

**DATED:**

**JURUPA COMMUNITY SERVICES  
DISTRICT**

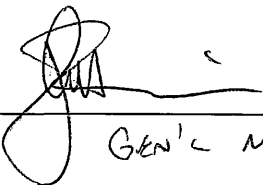
By: \_\_\_\_\_

**DATED:**

12/10/07

**WESTERN MUNICIPAL WATER  
DISTRICT**

By: \_\_\_\_\_

  
GEN'c MGR

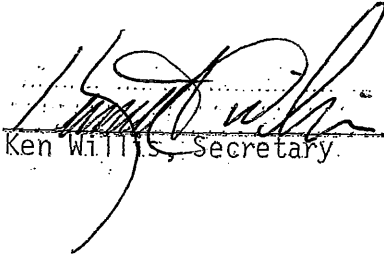
September 21, 2007

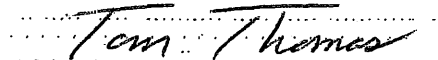
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**Section 3. Effect of Amendment** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

SB 441950 v1:008350.0001

  
Ken Willis, Secretary

  
Tom Thomas, President  
San Antonio Water Company

October 25, 2007

**Section 2. Increase the Limit on Storage of Local Supplemental Water** The current cap of 50,000 acre-feet of Storage of Supplemental Water described in paragraph 5.2(b)(iv) and 5.2(b)(vii) of the Peace Agreement shall be increased from 50,000 to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement paragraph 5.2(b)(v) shall no longer be in effect with regard to such applications.

**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

Party: TIM WOOD

By: [Signature]

# Exhibit H



**PEACE II AGREEMENT:  
PARTY SUPPORT FOR WATERMASTER'S OBMP  
IMPLEMENTATION PLAN, –  
SETTLEMENT AND RELEASE OF CLAIMS  
REGARDING FUTURE DESALTERS**

**WHEREAS**, paragraph 41 of the Judgment entered in *Chino Basin Municipal Water District v. City of Chino* (San Bernardino Superior Court Case No. 51010) grants Watermaster, with the advice of the Advisory and Pool Committees, “discretionary powers in order to implement an Optimum Basin Management Program (“OBMP”) for the Chino Basin”;

**WHEREAS**, the Parties to the Judgment executed an agreement resolving their differences and pledging their support for Watermaster actions in accordance with specific terms in June of 2000 (“Peace Agreement”);

**WHEREAS**, Watermaster approved Resolution 00-05, and thereby adopted the goals and objectives of the OBMP, the OBMP Implementation Plan and committed to act in accordance with the terms of the Peace Agreement;

**WHEREAS**, pursuant to Article IV, paragraph 4.2, each of the parties to the Peace Agreement agreed not to oppose Watermaster’s adoption and implementation of the OBMP Implementation Plan attached as Exhibit “B” to the Peace Agreement;

**WHEREAS**, the Peace Agreement, the OBMP Implementation Plan and the Chino Basin Watermaster Rules and Regulations contemplate further actions by Watermaster in furtherance of its responsibilities under paragraph 41 of the Judgment and in accordance with the Peace Agreement and the OBMP Implementation Plan;

**WHEREAS**, the Parties to the Peace Agreement made certain commitments regarding the funding, design, construction and operation of Future Desalters;

**WHEREAS**, after receiving input from its stakeholders in the form of the Stakeholder’s Non-Binding Term Sheet, Watermaster has proposed to adopt Resolution 07-05 attached as Exhibit “1” hereto to further implement the OBMP through a suite of measures commonly referred to and herein defined as “Peace II Measures”, including but not limited to the 2007 Supplement to the OBMP, the Second Amendment to the Peace Agreement, amendments to Watermaster’s Rules and Regulations, the purchase and sale of water within the Overlying (Non-Agricultural) Pool and certain Judgment amendments; and

**NOW, THEREFORE**, in consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon the conditions precedent set forth in Article III herein, the Watermaster Approval, and Court Order, and for other good and valuable consideration, the Parties agree as follows:

**ARTICLE I**  
**DEFINITIONS AND RULES OF CONSTRUCTION**

1.1 Definitions.

- (a) "Desalters" means Desalters and Future Desalters collectively, as defined in the Peace Agreement.
- (b) "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is defined in the 2004 Basin Plan amendment (RWQCB resolution R8-2004-001) attached hereto as Exhibit "B."
- (c) "Leave Behind" means a contribution to the Basin from water held in storage within the Basin under a Storage and Recovery Agreement that may be established by Watermaster from time to time that may reflect any or all of the following: (i) actual losses; (ii) equitable considerations associated with Watermaster's management of storage agreements; and (iii) protection of the long-term health of the Basin against the cumulative impacts of simultaneous recovery of groundwater under all storage agreements.
- (d) "Re-Operation" means the controlled overdraft of the Basin by the managed withdrawal of groundwater Production for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 authorized by paragraph 3 of the Engineering Appendix Exhibit I to the Judgment, to 600,000 acre feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution.
- (e) Unless otherwise expressly provided herein, all definitions set forth in the Peace Agreement and the Judgment are applicable to the terms as they are used herein.

1.2 Rules of Construction.

- (a) Unless the context clearly requires otherwise:
  - (i) The plural and singular forms include the other;
  - (ii) "Shall," "will," "must," and "agrees" are each mandatory;
  - (iii) "May" is permissive;
  - (iv) "Or" is not exclusive;
  - (v) "Includes" and "including" are not limiting; and
  - (vi) "Between" includes the ends of the identified range.

- (b) Headings at the beginning of Articles, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it.
- (c) The masculine gender shall include the feminine and neuter genders and vice versa.
- (d) The word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature.
- (e) Reference to any agreement (including this Agreement), document, or instrument means such agreement, document, instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms thereof.
- (f) Except as specifically provided herein, reference to any law, statute or ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder.

**ARTICLE II**  
**COMPLIANCE WITH CEQA**

- 2.1 Project Description. The proposed project description regarding the design, permitting, construction and operation of Future Desalter, securing Hydraulic Control through Basin Re-Operation is set forth in Attachment "A" to Watermaster Resolution 07-05 attached hereto as Exhibit "1."
- 2.2 Acknowledgment of IEUA as the Lead Agency for CEQA Review. IEUA has been properly designated as the "Lead Agency" for the purposes of completing environmental assessment and review of the proposed project.
- 2.3 Commitments are Consistent with CEQA. The Parties agree and acknowledge that no commitment will be made to carry out any "project" under the amendments to the OBMP and within the meaning of CEQA unless and until the environmental review and assessment that may be required by CEQA for that defined "project" have been completed.
- 2.4 Reservation of Discretion. Execution of this Agreement is not intended to commit any Party to undertake a project without compliance with CEQA or to commit the Parties individually or collectively to any specific course of action, which would result in the present approval of a future project.
- 2.5 No Prejudice by Comment or Failure to Comment. Nothing contained in environmental review of the Project, or a Party's failure to object or comment thereon, shall limit any

Party's right to allege that "Material Physical Injury" will result or has resulted from the implementation of the OBMP or its amendment.

**ARTICLE III**  
**CONDITIONS PRECEDENT**

- 3.1 Performance Under Articles IV-XII is Subject to Satisfaction of the Conditions Precedent. Each Party's obligations under this Agreement are subject to the satisfaction of the following conditions precedent on or before the dates specified below, unless satisfaction or a specified condition or conditions is waived in writing by all other Parties:
- (a) Watermaster approval of Resolution 07-05 in a form attached hereto as Exhibit "1," including the following Attachments thereto
    - (i) the amendments to the Chino Basin Watermaster Rules and Regulations set forth in Attachment "F" thereto.
    - (ii) the 2007 Supplement to the OBMP Implementation Plan set forth in Attachment "D" thereto.
    - (iii) the amendments to the Judgment set forth in Attachments "H, I, and J" thereto.
    - (iv) the Second Amendment to the Peace Agreement set forth in Attachment "L" thereto.
    - (v) the Purchase and Sale Agreement for the Purchase of Water by Watermaster From the Overlying (Non-Agricultural) Pool as set forth in Attachment G thereto.
  - (b) The execution of the proposed Second Amendment to the Peace Agreement by all Parties to the Peace Agreement .
  - (c) Court approval of the proposed Judgment Amendments and a further order of the Court directing Watermaster to proceed in accordance with the terms of the Peace II Measures as embodied in Resolution 07-05.

**ARTICLE IV**  
**MUTUAL ACKNOWLEDGEMENT AND COVENANTS**

- 4.1 Acknowledgment of Peace II Measures. The collective actions of Watermaster set forth in Watermaster Resolution 07-05 and the Attachments thereto (Peace II Measures) constitute further actions by Watermaster in implementing the OBMP in accordance with the grant and limitations on its discretionary authority set forth under paragraph 41 of the Judgment
- 4.2 Non-Opposition. No Party to this Agreement shall oppose Watermaster's adoption of Resolution 07-05 and implementation of the Peace II measures as embodied therein

including the Judgment Amendments, Amendments to the Peace Agreement, the 2007 Supplement to the OBMP Implementation Plan and Amendments to the Chino Basin Watermaster's Rules and Regulations or to Watermaster's execution of memoranda of agreement that are not materially inconsistent with the terms contained therein. Notwithstanding this covenant, no party shall be limited in their right of participation in all functions of Watermaster as they are provided in the Judgment or to preclude a Party to the Judgment from seeking judicial review of Watermaster determinations pursuant to the Judgment or as otherwise provided in this Agreement.

- 4.3 Consent to Amendments. Each Party expressly consents to the Judgment amendments and modifications set forth in Watermaster's Resolution 07-05.
- 4.4 Non-Agricultural Pool Intervention. The Parties acknowledge and agree that any Party to the Judgment shall have the right to purchase Non-Agricultural overlying property within the Basin and appurtenant water rights and to intervene in the Non-Agricultural Pool.

#### **ARTICLE V** **FUTURE DESALTERS**

- 5.1 Purpose. Watermaster plans to coordinate and the Parties to the Judgment plan to arrange for the physical capacity and potable water use of water from the Desalters. Desalters in existence on the effective date of this Agreement will be supplemented to provide the required capacity to cumulatively produce approximately 40,000 acre-feet per year of groundwater from the Desalters by 2012.
- 5.2 2007 Supplement to the OBMP Implementation Plan. The OBMP Implementation Plan will be supplemented as set forth in the 2007 Supplement to the OBMP Implementation Plan to reflect that Western Municipal Water District ("WMWD"), acting independently or in its complete discretion with the City of Ontario ("Ontario") or the Jurupa Community Services District ("Jurupa") or both, will exercise good faith and reasonable best efforts to arrange for the design, planning, and construction of Future Desalters in accordance with the 2007 Supplement to the OBMP Implementation Plan, to obtain Hydraulic Control, further Re-Operation and support the Future Desalters.
- 5.3 Implementation. WMWD, acting independently or in its complete discretion with Ontario, Jurupa, or both, will exercise good faith and reasonable best efforts to arrange for the design, planning, and construction of Future Desalters in accordance with the 2007 Supplement to the OBMP Implementation Plan, to account for Hydraulic Control, Re-Operation and Future Desalters.
- (a) WMWD, acting independently or in its complete discretion with Ontario or Jurupa or both, will exercise good faith and reasonable best efforts to proceed in accordance with the timeline for the completion of design, permitting, finance and construction as attached hereto as Exhibit "2"
- (b) WMWD, acting independently or in its complete discretion with the City of Ontario or the Jurupa Community Services District or both, will provide quarterly progress reports to Watermaster and the Court.



- 5.4 Project Description. The Future Desalters will add up to 9 mgd to existing Desalters. This will include production capacity from new groundwater wells that will be located in the Southerly end of the Basin, as depicted in Exhibit "3" attached hereto and incorporated herein by this reference. The final design and construction of Future Desalters *may* depend on the terms and conditions that may be freely arrived at by fair bargaining among WMWD and the Chino Basin Desalter Authority ("CDA") or whether it is required to build stand-alone facilities or both. There are material yield benefits to the Parties to the Judgment that are achieved by obtaining Hydraulic Control through Basin Re-Operation. The extent of these benefits is somewhat dependent upon the final location of new production facilities within the southerly end of the Basin. Accordingly, Watermaster will ensure that the location of Future Desalter groundwater production facilities will achieve both Hydraulic Control and maximize yield enhancement by their location emphasizing groundwater production from the Southerly end of the Basin.
- 5.5 Implementing Agreements. Within twenty-four (24) months of the effective date, WMWD, acting independently or in its complete discretion with the City of Ontario or the Jurupa Community Services District or both, will exercise good faith and reasonable best efforts to complete final binding agreement(s) regarding Future Desalters that includes the following key terms:
- (a) Arrangements for WMWD's purchase of product water from CDA;
  - (b) Arrangements with CDA, Jurupa and other Chino Basin parties for the common use of existing facilities, if any;
  - (c) Arrangement with the owners of the SARI line;
  - (d) Arrangements with the Appropriative Pool regarding the apportionment of any groundwater produced as controlled overdraft in accordance with the Physical Solution between Desalters I, Desalters II on the one hand and the Future Desalters on the other hand;
  - (e) WMWD's payment to Watermaster to reimburse Parties to the Judgment for their historical contributions towards the OBMP, if any;
  - (f) The schedule for approvals and project completion.
- 5.6 Reservation of Discretion. Nothing herein shall be construed as committing WMWD, or any members of CDA to take any specific action(s) to accommodate the needs or requests of the other, Watermaster, or any Party to the Judgment, whatever the request may be.
- 5.7 Condition Subsequent. WMWD's obligation to execute a binding purchase agreement with CDA or to independently develop the Future Desalters is subject to the express condition subsequent that the total price per acre-foot of water delivered must not be projected to exceed the sum of the following: (i) the full MWD Tier II Rate; (ii) the MWD Treatment Surcharge calculated in terms of an annual average acre-foot charge; and (iii) \$150 (in 2006 dollars) per acre-foot of water delivered to account for water supply reliability.

October 25, 2007

- (a) The full acre-foot cost to Western for Capital and O&M (assuming the priority allocation of controlled overdraft), includes:
  - (i) the delivery of the desalted water to its Mockingbird Reservoir or directly to the City of Norco,
  - (ii) any applicable ongoing Watermaster assessments, payments to CDA and JCSD and for SARI utilization.
- (b) Provided that if third-party funding, grants and a MWD subsidy under the Local Resources Program or otherwise should reduce Western's costs to an amount which is \$75 (in 2006 dollars) below the cap described in paragraph 5.5, Western will transmit an amount equal to fifty (50) percent of the amount less than the computed price cap less \$75 (in 2006 dollars) to Watermaster.
- (c) Western may elect to exercise its right of withdrawal under this paragraph 5.7 within 120 days following the later of: (1) completion of preliminary design; or (2) the certification of whatever CEQA document is prepared for the project, but not later than sixty (60) days thereafter and in no event after a binding water purchase agreement has been executed.

5.8 Limitations. The operation of the Future Desalters will be subject to the following limitations:

- (a) Well Location. New groundwater production facilities for the Future Desalters will be located in the southern end of the Basin to achieve the dual purpose of obtaining Hydraulic Control and increasing Basin yield.
  - (i) New wells will be constructed in the shallow aquifer system among Desalter I wells No. 1 through 4 and west of Desalter I.
  - (ii) So long as these wells produce at least one-half of the Future Desalter groundwater, the Future Desalters shall be entitled to first priority for the allocation of the 400,000 acre-feet of controlled overdraft authorized by the Judgment Amendments to Exhibit I.
- (b) Export. The export of groundwater from the Basin must be minimized. WMWD will present a plan for export minimization to the Watermaster for review and approval prior to operation of the Future Desalters.
  - (i) Watermaster will account for water imported and exported by WMWD.
  - (ii) Watermaster will prepare an initial reconciliation of WMWD's imports and exports at the end of the first ten (10) years of operation and every year thereafter to determine whether a "net export" occurred.

- (iii) WMWD will pay an assessment, if any, on all "net exports" in accordance with Judgment Exhibit "H," paragraph 7(b) after the initial reconciliation is completed at the end of the first ten (10) years of operation.

**ARTICLE VI**  
**GROUNDWATER PRODUCTION BY AND**  
**REPLENISHMENT FOR DESALTERS**

- 6.1 Acknowledgment. The Parties acknowledge that the hierarchy for providing Replenishment Water for the Desalters is set forth in Article VII, paragraph 7.5 of the Peace Agreement, and that this section controls the sources of water that will be offered to offset Desalter Production.
  
- 6.2 Peace II Desalter Production Offsets. To facilitate Hydraulic Control through Basin Re-Operation, in accordance with the 2007 Supplement to the OBMP Implementation Plan and the amended Exhibits G and I to the Judgment, additional sources of water will be made available for purposes of Desalter Production and thereby some or all of a Replenishment obligation. With these available sources, the Replenishment obligation attributable to Desalter production in any year will be determined by Watermaster as follows:
  - (a) Watermaster will calculate the total Desalter Production for the preceding year and then apply a credit against the total quantity from:
    - (i) the Kaiser account (Peace Agreement Section 7.5(a).);
    - (ii) dedication of water from the Overlying (Non-Agricultural) Pool Storage Account or from any contribution arising from an annual authorized Physical Solution Transfer in accordance with amended Exhibit G to the Judgment;
    - (iii) New Yield (other than Stormwater (Peace Agreement Section 7.5(b)));
    - (iv) any declared losses from storage in excess of actual losses enforced as a "Leave Behind";
    - (v) Safe Yield that may be contributed by the parties (Peace Agreement Section 7.5(c));
    - (vi) any Production of groundwater attributable to the controlled overdraft authorized pursuant to amended Exhibit I to the Judgment.
  
  - (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(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) A Replenishment Assessment against the Appropriative Pool, 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. 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.
  - (iii) The quantification of any Party's share of Operating Safe Yield does not include the result of any land use conversions.
- (c) The rights and obligations of the parties, whatever they may be, regarding Replenishment Assessments attributable to all Desalters and Future Desalters in any renewal term of the Peace Agreement are expressly reserved and not altered by this Agreement.

## **ARTICLE VII**

### **YIELD ACCOUNTING**

- 7.1 New Yield Attributable to Desalters. Watermaster will make an annual finding as to the quantity of New Yield that is made available by Basin Re-Operation including that portion that is specifically attributable to the Existing and Future Desalters. Any subsequent recalculation of New Yield as Safe Yield by Watermaster will not change the priorities set forth above for offsetting Desalter production as set forth in Article VII, Section 7.5 of the Peace Agreement. For the initial term of the Peace Agreement, neither Watermaster nor the Parties will request that Safe Yield be recalculated in a manner that incorporates New Yield *attributable to the Desalters* into the determination of Safe Yield so that this source of supply will be available for Desalter Production rather than for use by individual parties to the Judgment.
- 7.2 Apportionment of Controlled Overdraft. Within twelve (12) months of the court approval and no later than December 1, 2008, with facilitation by Watermaster, WMWD and the Appropriative Pool will establish by mutual agreement the portion of the 400,000 acre-feet of the controlled overdraft authorized by the amendment to Exhibit "I" to the Judgment that will be allocated among the Desalters and pursuant to a proposed schedule.

- (a) To the extent the groundwater wells for the Future Desalters pump at least fifty (50) percent groundwater from the southern end of the Basin as set forth in Exhibit "3" the *Future Desalters* will be entitled to first priority to the controlled overdraft authorized by the amendment to Exhibit "I" to the Judgment.
- (b) WMWD and the Appropriative Pool will exercise good faith and reasonable best efforts to arrive at a fair apportionment. Relevant considerations in establishing the apportionment include, but are not limited to: (i) the nexus between the proposed expansion and achieving Hydraulic Control;(ii) the nexus between the project and obtaining increased yield; (iii) the identified capital costs; (iv) operating and maintenance expenses; and (iv) the availability of third-party funding.
- (c) The parties will present any proposed agreement regarding apportionment to Watermaster. Watermaster will provide due regard to any agreement between WMWD and the Appropriative Pool and approve it so long as the proposal phases the Re-Operation over a reasonable period of time to secure the physical condition of Hydraulic Control and will achieve the identified yield benefits while at the same time avoiding Material Physical Injury or an inefficient use of basin resources.
- (d) If WMWD and the Appropriative Pool do not reach agreement on apportionment of controlled overdraft to Future Desalters, then no later than August 31, 2009, the members of the Appropriative Pool will submit a plan to Watermaster that achieves the identified goals of increasing the physical capacity of the Desalters and potable water use of approximately 40,000 acre-feet of groundwater production from the Desalters from the Basin no later than 2012. The Appropriative Pool proposal must demonstrate how it has provided first priority to the Future Desalters if the conditions of paragraph 7.2(a) are met.
- (e) Watermaster will have discretion to apportion the controlled overdraft under a schedule that reflects the needs of the parties and the need for economic certainty and the factors set forth in Paragraph 7.2(a) above. Watermaster may exercise its discretion to establish a schedule for Basin Re-Operation that best meets the needs of the Parties to the Judgment and the physical conditions of the Basin, including but not limited to such methods as "ramping up," "ramping down," or "straight-lining."
  - (i) An initial schedule will be approved by Watermaster and submitted to the Court concurrent with Watermaster Resolution 07-05.
  - (ii) Watermaster may approve and request Court approval of revisions to the initial schedule if Watermaster's approval and request are supported by a technical report demonstrating the continued need for access to controlled overdraft, subject to the limitations set forth in amended Exhibit "I" to the Judgment and the justification for the amendment.

- 7.3 Suspension. An evaluation of Watermaster's achievement of Basin outflow conditions, achievement of Hydraulic Control and compliance with Regional Board orders will be completed annually by Watermaster. Re-Operation and Watermaster's apportionment of controlled overdraft will not be suspended in the event that Hydraulic Control is secured in any year *before* the full 400,000 acre-feet has been produced so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures to avoid Material Physical Injury and that equitably distributes the cost of any mitigation attributable to the identified contingencies, and (ii) Watermaster is in substantial compliance with a Court approved Recharge Master Plan as set forth in Paragraph 8.1 below.
- 7.4 Storage: Uniform Losses. The Parties acknowledge that Watermaster has assessed a two (2)-percent loss on all groundwater presently held in storage to reflect the current hydrologic condition. As provided in the Peace Agreement, Watermaster will continue to maintain a minimum 2 (two) percent loss until substantial evidence exists to warrant the imposition of another loss factor. However, the Parties further acknowledge and agree that losses have been substantially reduced through the OBMP Implementation Plan and the operation of Desalters I and II and that once Hydraulic Control is achieved outflow and losses from the Basin will have been limited to de minimis quantities. Therefore, Watermaster may establish uniform losses for all water held in storage based on whether the Party has substantially contributed to Watermaster reducing losses and ultimately securing and maintaining Hydraulic Control.
- (a) Pre-Implementation of the Peace Agreement. The uniform annual loss (leave behind) of six (6) percent will be applied to all storage accounts to address actual losses, management and equitable considerations arising from the implementation of the Peace Agreement, the OBMP Implementation Plan, the 2007 Supplement to the OBMP Implementation Plan, including but not limited to the Desalters and Hydraulic Control unless the Party holding the storage account: (i) has previously contributed to the implementation of the OBMP as a Party to the Judgment, is in compliance with their continuing covenants under the Peace Agreement or in lieu thereof they have paid or delivered to Watermaster "financial equivalent" consideration to offset the cost of past performance prior to the implementation of the OBMP and (ii) promised continued future compliance with Watermaster Rules and Regulations. In the event that a Party satisfies 7.4(a)(i) and 7.4(a)(ii) they will be assessed a minimum loss of two (2) percent against all water held in storage to reflect actual estimated losses. Watermaster's evaluation of the sufficiency of any consideration or financial equivalency may take into account the fact that one or more Parties to the Judgment are not similarly situated.
- (b) Post-Hydraulic Control. Following Watermaster's determination that it has achieved Hydraulic Control and for so long as Watermaster continues to sustain losses from the Basin to the Santa Ana River at a de minimis level (less than one (1) percent), any Party to the Judgment (agency, entity or person) may qualify for the Post-Hydraulic Control uniform loss percentage of less than 1 percent if they meet the criteria of 7.4(a)(i) and 7.4(a)(ii) above.

- 7.5 Allocation of Losses. Any losses from storage assessed as a Leave Behind in excess of actual losses (“dedication quantity”) will be dedicated by Watermaster towards groundwater Production by the Desalters to thereby avoid a Desalter replenishment obligation that may then exist *in the year* of recovery. Any dedication quantity which is not required to offset Desalter Production in the year in which the loss is assessed, will be made available to the members of the Appropriative Pool. The dedication quantity will be pro-rated among the members of the Appropriative Pool in accordance with each Producer’s combined total share of Operating Safe Yield and the previous year’s actual production. However, before any member of the Appropriative Pool may receive a distribution of any dedication quantity, they must be in full compliance with the 2007 Supplement to the OBMP Implementation Plan and current in all applicable Watermaster assessments.

**ARTICLE VIII**  
**RECHARGE**

- 8.1 Update to the Recharge Master Plan. Watermaster will update and obtain Court approval of its update to the Recharge Master Plan to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and subsequently operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan will be jointly approved by IEUA and Watermaster and shall contain recharge estimations and summaries of the projected water supply availability as well as the physical means to accomplish the recharge projections. Specifically, the Plan will reflect an appropriate schedule for planning, design, and physical improvements as may be required to provide reasonable assurance that following the full beneficial use of the groundwater withdrawn in accordance with the Basin Re-Operation and authorized controlled overdraft, that sufficient Replenishment capability exists to meet the reasonable projections of Desalter Replenishment obligations. With the concurrence of IEUA and Watermaster, the Recharge Master Plan will be updated and amended as frequently as necessary with Court approval and not less than every five (5) years. Costs incurred in the design, permitting, operation and maintenance of recharge improvements will be apportioned in accordance with the following principles.
- a. Operations and Maintenance. All future operations and maintenance costs attributable to all recharge facilities utilized for recharge of recycled water in whole or in part unfunded from third party sources, will be paid by the Inland Empire Utilities Agency (“IEUA”) and Watermaster. The contribution by IEUA will be determined annually on the basis of the relative proportion of recycled water recharged bears to the total recharge from all sources in the prior year. For example, if 35 percent of total recharge in a single year is from recycled water, then IEUA will bear 35 percent of the operations and maintenance costs. All remaining unfunded costs attributable to the facilities used by Watermaster will be paid by Watermaster.
- i. IEUA reserves discretion as to how it assesses its share of costs.



ii. Watermaster will apportion its costs among the members of the stakeholders in accordance with Production, excluding Desalter Production.

iii. The operations and maintenance costs of water recharged by aquifer storage and recovery will not be considered in the calculation other than by express agreement.

b. Capital. Mutually approved capital improvements for recharge basins that do or can receive recycled water constructed pursuant to the Court approved Recharge Master Plan, if any, will be financed through the use of third party grants and contributions if available, with any unfunded balance being apportioned 50 percent each to IEUA and Watermaster. The Watermaster contribution shall be allocated according to shares of Operating Safe Yield. All remaining unfunded costs attributable to the facilities used by Watermaster will be paid by Watermaster.

8.2 Coordination. The members of the Appropriative Pool will coordinate the development of their respective Urban Water Management Plans and Water Supply Master Plans with Watermaster as follows.

- (a) Each Appropriator that prepares an Urban Water Management Plan and Water Supply Plans will provide Watermaster with copies of their existing and proposed plans.
- (b) Watermaster will use the Plans in evaluating the adequacy of the Recharge Master Plan and other OBMP Implementation Plan program elements.
- (c) Each Appropriator will provide Watermaster with a draft in advance of adopting any proposed changes to their Urban Water Management Plans and in advance of adopting any material changes to their Water Supply Master Plans respectively in accordance with the customary notification routinely provided to other third parties to offer Watermaster a reasonable opportunity to provide informal input and informal comment on the proposed changes.
- (d) Any party that experiences the loss or the imminent threatened loss of a material water supply source will provide reasonable notice to Watermaster of the condition and the expected impact, if any, on the projected groundwater use.

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

8.4 Acknowledgment re 6,500 Acre-Foot Supplemental Recharge. The Parties make the following acknowledgments regarding the 6,500 Acre-Foot Supplemental Recharge:

- (a) A fundamental premise of the Physical Solution is that all water users dependent upon Chino Basin will be allowed to pump sufficient waters from the Basin to meet their requirements. To promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin, Watermaster has committed to use its best efforts to direct recharge relative to production in each area and sub-area of the Basin and to achieve long-term balance between total recharge and discharge. The Parties acknowledge that to assist Watermaster in providing for recharge, the Peace Agreement sets forth a requirement for Appropriative Pool purchase of 6,500 acre-feet per year of Supplemental Water for recharge in Management Zone 1 (MZ1). The purchases have been credited as an addition to Appropriative Pool storage accounts. The water recharged under this program has not been accounted for as Replenishment water.
- (b) Watermaster was required to evaluate the continuance of this requirement in 2005 by taking into account provisions of the Judgment, Peace Agreement and OBMP, among all other relevant factors. It has been determined that other obligations in the Judgment and Peace Agreement, including the requirement of hydrologic balance and projected replenishment obligations, will provide for sufficient wet-water recharge to make the separate commitment of Appropriative Pool purchase of 6,500 acre-feet unnecessary. Therefore, because the recharge target as described in the Peace Agreement has been achieved, further purchases under the program will cease and Watermaster will proceed with operations in accordance with the provisions of paragraphs (c), (d) and (e) below.
- (c) The parties acknowledge that, regardless of Replenishment obligations, Watermaster will independently determine whether to require wet-water recharge within MZ1 to maintain hydrologic balance and to provide equal access to groundwater in accordance with the provisions of this Section 8.4 and in a manner consistent with the Peace Agreement, OBMP and the Long Term Plan for Subsidence.". Watermaster will conduct its recharge in a manner to provide hydrologic balance within, and will emphasize recharge in MZ1. Accordingly, the Parties acknowledge and agree that each year Watermaster shall continue to be guided in the exercise of its discretion concerning recharge by the principles of hydrologic balance.
- (d) Consistent with its overall obligations to manage the Chino Basin to ensure hydrologic balance within each management zone, for the duration of the Peace Agreement (until June of 2030), Watermaster will ensure that a minimum of 6,500 acre-feet of wet water recharge occurs within MZ1 on an annual basis. However, to the extent that water is unavailable for recharge or there is no replenishment obligation in any year, the obligation to recharge 6,500 acre-feet will accrue and be satisfied in subsequent years.
  - (1) Watermaster will implement this measure in a coordinated manner so as to

facilitate compliance with other agreements among the parties, including but not limited to the Dry-Year Yield Agreements.

- (2) In preparation of the Recharge Master Plan, Watermaster will consider whether existing groundwater production facilities owned or controlled by producers within MZ1 may be used in connection with an aquifer storage and recovery ("ASR") project so as to further enhance recharge in specific locations and to otherwise meet the objectives of the Recharge Master Plan.
- (e) Five years from the effective date of the Peace II Measures, Watermaster will cause an evaluation of the minimum recharge quantity for MZ1. After consideration of the information developed in accordance with the studies conducted pursuant to paragraph 3 below, the observed experiences in complying with the Dry Year Yield Agreements as well as any other pertinent information, Watermaster may increase the minimum requirement for MZ1 to quantities greater than 6,500 acre-feet per year. In no circumstance will the commitment to recharge 6,500 acre-feet be reduced for the duration of the Peace Agreement.

**ARTICLE IX**

9.1 Basin Management Assistance. Three Valleys Municipal Water District ("TVMWD") shall assist in the management of the Basin through a financial contribution of \$300,000 to study the feasibility of developing a water supply program within Management Zone 1 of the Basin or in connection with the evaluation of Future Desalters. The study will emphasize assisting Watermaster in meeting its OBMP Implementation Plan objectives of concurrently securing Hydraulic Control through Re-Operation while attaining Management Zone 1 subsidence management goals. Further, TVMWD has expressed an interest in participating in future projects in the Basin that benefit TVMWD. If TVMWD wishes to construct or participate in such future projects, TVMWD shall negotiate with Watermaster in good faith concerning a possible "buy-in" payment.

9.2 Allocation of Non-Agricultural Pool OBMP Special Assessment

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(c) of Exhibit G to the Judgment (as amended) will be apportioned among the members of the Appropriative Pool in each year as follows:

(i)	City of Ontario.	80 af
(ii)	City of Upland	161 af
(iii)	Monte Vista Water District	213 af
(iv)	City of Pomona	220 af
(v)	Marygold Mutual Water Co	16 af
(vi)	West Valley Water District	15 af



b. In the eleventh year from the effective date of the Peace II Measures and in each year thereafter in which water may be available from the Overlying (Non-Agricultural) Pool in excess of identified Desalter replenishment obligations as determined in accordance with Section 6.2 above, any excess water (or financial equivalent) will be distributed pro rata among the members of the Appropriate Pool based upon each Producer's combined total share of Operating Safe Yield and the previous year's actual production.

**ARTICLE X**  
**SETTLEMENT AND RELEASE**

- 10.1 Settlement. By its execution of this Agreement, the Parties mutually and irrevocably, fully settle their respective claims, rights and obligations, whatever they may be, regarding the design, funding, construction and operation of Future Desalters as set forth in and arising from Article VII of the Peace Agreement.
- 10.2 Satisfaction of Peace Agreement Obligation Regarding Future Desalters. The Parties' individual and collective responsibilities arising from the Part VII of the Peace Agreement and the OBMP Implementation Plan regarding the planning, design, permitting, construction and operation of Future Desalters, whatever they may be, are unaffected by this Agreement. However, upon the completion of a 10,000 AFY (9 mgd) expansion of groundwater production and desalting from Desalter II as provided for herein, the Parties will be deemed to have satisfied all individual and collective pre-existing obligations arising from the Peace Agreement and the OBMP Implementation Plan, whatever they may be, with regard to Future Desalters as described in Part VII of the Peace Agreement and the OBMP Implementation Plan.
- 10.3 Satisfaction of Pomona Credit. In recognition of the ongoing benefits received by TVMWD through the City of Pomona's anion exchange project, as its sole and exclusive responsibility, TVMWD will make an annual payment to Watermaster in an amount equal to the credit due the City of Pomona under Peace Agreement Paragraph 5.4(b) ("the Pomona Credit").
- (a) Within ninety (90) days of each five-year period following the Effective Date of this Agreement, in its sole discretion TVMWD shall make an election whether to continue or terminate its responsibilities under this paragraph. TVMWD shall provide written notice of such election to Watermaster.
  - (b) Watermaster will provide an annual invoice to TVMWD for the amount of the Pomona Credit.
  - (c) Further, in any renewal term of the Peace Agreement, TVMWD will continue to make an equivalent financial contribution which TVMWD consents to



Watermaster's use for the benefit of MZ1, subject to the same conditions set forth above with respect to TVMWD's payment of the "Pomona Credit".

- (d) In the event TVMWD elects to terminate its obligation under this Paragraph, the Peace Agreement and the responsibility for satisfying the Pomona Credit will remain unchanged and unaffected, other than as it will be deemed satisfied for each five-year period that TVMWD has actually made the specified payment.

10.4 Release. Upon WMWD's completion of a 10,000 AFY (9 mgd) expansion of groundwater production and desalting in a manner consistent with the parameters set forth in this Agreement, each Party, for itself, its successors, assigns, and any and all persons taking by or through it, hereby releases WMWD and IEUA from any and all obligations arising from WMWD's and IEUA's responsibility for securing funding, designing, and constructing Future Desalters as set forth in or arising exclusively from Article VII of the Peace Agreement and the Program Elements 3, 6, and 7, OBMP Implementation Plan only, and each Party knowingly and voluntarily waives all rights and benefits which are provided by the terms and provisions of section 1542 of the Civil Code of the State of California, or any comparable statute or law which may exist under the laws of the State of California, in or arising from WMWD's and IEUA's responsibility for securing funding, designing, and constructing Future Desalters as set forth in or arising exclusively from Article VII of the Peace Agreement and the OBMP Implementation Plan only. The Parties hereby acknowledge that this waiver is an essential and material term of this release. The Parties, and each of them, acknowledge that Civil Code section 1542 provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Each Party understands and acknowledges that the significance and consequence of this waiver of Civil Code section 1542 is the waiver of any presently unknown claims as described above, and that if any Party should eventually suffer additional damages arising out of the respective claim that Party will not be able to make any claim for those additional damages. Further, all Parties to this Agreement acknowledge that they consciously intend these consequences even as to claims for such damages that may exist as of the date of this Agreement but which are not known to exist and which, if known, would materially affect the Parties' respective decision to execute this Agreement, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

10.5 Assessments. In view of the substantial investments previously made and contemplated by Watermaster and the parties over the term of the Peace Agreement and in particular to implement the OBMP, the parties desire substantial certainty regarding Watermaster's principles of cost allocation. The principles set forth in the Peace Agreement and the

October 25, 2007

Peace II Measures including those stated herein, constitute a fair and reasonable allocation of responsibility among the stakeholders. Accordingly, other than in the event of an emergency condition requiring prompt action by Watermaster or to correct a manifest injustice arising from conditions not presently prevailing in the Basin and unknown to Watermaster and the parties and then only to the extent Watermaster retains discretion, Watermaster will maintain the principles of cost allocation for apportioning costs and assessments as provided in the Judgment and now implemented through the Peace Agreement and the Peace II Measures for the balance of the initial Term of the Peace Agreement. For the balance of the initial Term of the Peace Agreement, the parties to the Peace II Agreement will waive any objections to the Watermaster's principles of cost allocation other than as to issues regarding whether Watermaster has: (i) properly followed appropriate procedures; (ii) correctly computed assessments and charges; and (iii) properly reported .

10.6 Reservation of Rights. Nothing herein shall be construed as precluding any party to the Judgment from seeking judicial review of any Watermaster action on the grounds that Watermaster has failed to act in accordance with the Peace Agreement as amended, this Agreement, the Amended Judgment, the OBMP Implementation Plan as amended and applicable law.

October 25, 2007

**ARTICLE XI**  
**TERM**

- 11.1 Commencement. This Agreement will become effective upon the satisfaction of all conditions precedent and shall expire on the Termination Date.
- 11.2 Termination. This Agreement is coterminous with the initial term of the Peace Agreement and will expire of its own terms and terminate on the date of the Initial Term of the Peace Agreement.

**ARTICLE XIII**  
**GENERAL PROVISIONS**

- 12.1 Construction of this Agreement. Each Party, with the assistance of competent legal counsel, has participated in the drafting of this Agreement and any ambiguity should not be construed for or against any Party on account of such drafting.
- 12.2 Awareness of Contents/Legal Effect. The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.
- 12.3 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute an Agreement notwithstanding that the signatures of all Parties do not appear on the same page.

IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

Party: \_\_\_\_\_

By \_\_\_\_\_

~~October 25, 2007~~

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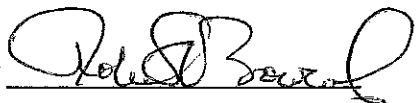
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- 12.3 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute an Agreement notwithstanding that the signatures of all Parties do not appear on the same page.

IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated: April 24, 2008

Party: Non-Agricultural Pool

By: 

October 25, 2007

**ARTICLE XI**  
**TERM**

- 11.1 Commencement. This Agreement will become effective upon the satisfaction of all conditions precedent and shall expire on the Termination Date.
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IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated: 12/11/07

Party: CITY OF UPLAND

By Robb Quincey  
ROBB QUINCEY  
CITY MANAGER

October 25, 2007

ARTICLE XI

TERM

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ARTICLE XIII

GENERAL PROVISIONS

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IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

Party: T. V. W. W. P.

By [Signature]

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**TERM**

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- 11.2 Termination. This Agreement is coterminous with the initial term of the Peace Agreement and will expire of its own terms and terminate on the date of the Initial Term of the Peace Agreement.

**ARTICLE XIII**  
**GENERAL PROVISIONS**

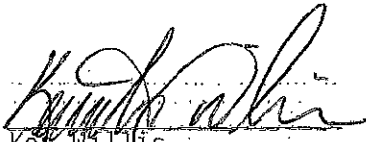
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- 12.2 Awareness of Contents/Legal Effect. The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.
- 12.3 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute an Agreement notwithstanding that the signatures of all Parties do not appear on the same page.

IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

Party: San Antonio Water Company

By Tom Thomas  
Tom Thomas  
President

  
Ken Wittig  
Secretary

October 25, 2007

**ARTICLE XI**  
**TERM**

- 11.1 Commencement. This Agreement will become effective upon the satisfaction of all conditions precedent and shall expire on the Termination Date.
- 11.2 Termination. This Agreement is coterminous with the initial term of the Peace Agreement and will expire of its own terms and terminate on the date of the Initial Term of the Peace Agreement.

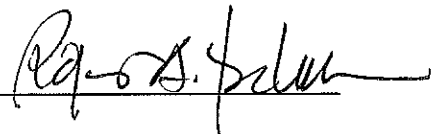
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IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

Party: CUCAMINGALVAJUEY WATER DISTRICT

By 



October 25, 2007

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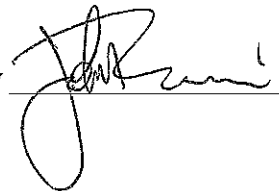
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IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

Party: WESTERN MWD

By  \_\_\_\_\_

October 25, 2007

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IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated: December 7, 2007

Party: FONTANA UNION WATER COMPANY

By   
Robert A DeLoach, President

October 25, 2007

**ARTICLE XI**  
**TERM**

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IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated: 12/12/07

Party: WEST END CONSOLIDATED WATER C

By Tom R. Thomas  
Tom R. THOMAS

October 25, 2007

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**TERM**

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IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated: *Dec. 19, 2007*

Party: *Ag Pool - W/Rec master*  
By: *[Signature]*

October 25, 2007

**ARTICLE XI**  
**TERM**

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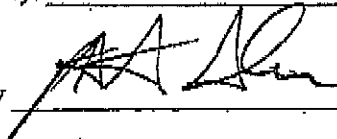
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IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

Party: CITY OF CHINO

By



ATEST:

DATED: 2-21-08

Lenna J. Tanker  
Lenna J. Tanker, City Clerk

# Exhibit 1

September 21, 2007

**WATERMASTER RESOLUTION  
NO. 07-05**

**RESOLUTION OF THE CHINO BASIN WATERMASTER  
REGARDING THE PEACE II AGREEMENT AND  
THE OBMP IMPLEMENTATION PLAN**

**WHEREAS**, the Judgment in the Chino Basin Adjudication, *Chino Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court No. 51010, created the Watermaster and directed it to perform the duties as provided in the Judgment or ordered or authorized by the court in the exercise of the Court's continuing jurisdiction;

**WHEREAS**, Watermaster has the express powers and duties as provided in the Judgment or as "hereafter" ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction" subject to the limitations stated elsewhere in the Judgment;

**WHEREAS**, Watermaster, with the advice of the Advisory and Pool Committees has discretionary powers to develop an OBMP for Chino Basin, pursuant to Paragraph 41 of the Judgment;

**WHEREAS**, in June of 2000, the Parties to the Judgment executed the Peace Agreement providing for the implementation of the OBMP and Watermaster adopted Resolution 00-05 whereby it agreed to act in accordance with the Peace Agreement;

**WHEREAS**, the Court ordered Watermaster to proceed in accordance with the Peace Agreement and the OBMP Implementation, Exhibit "B" thereto;

**WHEREAS**, Watermaster adopted and the Court approved Chino Basin Watermaster Rules and Regulations in June of 2001;

**WHEREAS**, the Peace Agreement, the OBMP Implementation Plan and the Chino Basin Watermaster Rules and Regulations reserved Watermaster's discretionary powers in accordance with Paragraph 41 of the Judgment, with the advice from the Advisory and Pool Committees, and contemplated further implementing actions by Watermaster;

**WHEREAS**, the Judgment requires that Watermaster in implementing the Physical Solution, and the OBMP have flexibility to consider and where appropriate make adjustments after taking into consideration technological, economic, social and institutional factors in maximizing the efficient use of the waters of the Basin.

**WHEREAS**, the Parties to the Judgment provided input into the creation of a "Stakeholder Non-Binding Term Sheet" that articulated methods to maximize beneficial use of the Basin ("Peace II measures") was distributed to and considered by each of the Pools, the Advisory Committee and the Watermaster Board and subsequently transmitted to the Court;

September 21, 2007

**WHEREAS**, Watermaster will continue to require that to the extent any of the Peace II Implementing Measures constitute "projects" within the meaning of the California Environmental Quality Act ("CEQA"), compliance with CEQA will be required as a pre-condition of Watermaster's issuance of any final, binding approvals; and

**WHEREAS**, the actions articulated in the "Stakeholder Non-Binding Term Sheet" and contemplated herein to maximize the beneficial use of the groundwater and the Basin benefit the Basin and the Parties to the Judgment.

**NOW, THEREFORE, IT IS HEREBY RESOLVED AND DETERMINED THAT:**

1. Watermaster caused the completion of a preliminary engineering, hydrogeologic, and technical evaluation of the physical impacts to the Basin and to the Parties to the Judgment that may result from implementation of the Peace II measures. The preliminary evaluation was conducted by Mark Wildermuth of Wildermuth Environmental.

2. The Assistant to the Special Referee, Joe Scalmanini of Luhdorff & Scalmanini Consulting Engineers, transmitted his technical review in March of 2007 ("Report"). In relevant part, the Report states:

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

3. Watermaster caused the preparation of a specific project description set forth in Attachment "A" hereto for the purpose of conducting a more refined engineering, hydrogeologic and technical evaluation of the physical impacts to the Basin and to the Parties to the Judgment that may result from implementation of the Peace II measures.

4. Watermaster caused the completion of a macro socioeconomic analysis by Dr. David Sunding, a PhD in economics and professor at the University of California Berkeley set forth in Attachment "B" hereto. The macro analysis provided an evaluation of the macro costs and benefits to the parties as a whole that may be attributable to the Peace II measures.

5. Watermaster caused an update of the previously completed socioeconomic analysis conducted pursuant to the Judgment. The analysis was completed by Dr. Sunding, and it considered the positive and negative impacts of implementing the OBMP, the Peace Agreement, and the Peace II measures, including Watermaster assessments. The analysis also addressed the potential distribution of costs and benefits among the parties that were initiated



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with the approval of the Peace Agreement. The study was completed in final draft form on September 13, 2007 and is set forth in Attachment "C" hereto. Each of the Parties to the Judgment has had the opportunity to comment on earlier drafts of the report and on the final draft of the report and to consider the analyses contained therein prior to Watermaster's approval of this Resolution 07-05.

9. Watermaster has caused the preparation of the 2007 Supplement to the Optimum Basin Management Program ("OBMP") addressing Watermaster's efforts to, among other things; pursue Hydraulic Control through Basin Re-Operation as set forth in Attachment "D" hereto.

10. Watermaster has prepared a summary of the cumulative total of groundwater production and desalting from all authorized Desalters and other activities authorized by the 2007 Supplement to the OBMP Implementation Plan as amended as provided in the Peace Agreement in a schedule that: (i) identifies the total quantity of groundwater that will be produced through the proposed Basin Re-Operation to obtain Hydraulic Control, and (ii) characterizes and accounts for all water that is projected to be produced by the Desalters for the initial Term of the Peace Agreement (by 2030) as dedicated water, New Yield, controlled overdraft pursuant to the Physical Solution or subject to Replenishment . This schedule is set forth in Attachment "E" hereto. Watermaster will modify its projections from time to time, as may be prudent under the circumstances.

11. More than fifteen months have passed since the Non-Binding Term Sheet was initially published by Watermaster in its current form and transmitted to the Court for its consideration and more than six months have passed following Watermaster's declaration that any party interested in participating in the development and construction of Future Desalters should identify their interest in making a proposal and no party has stepped forward and made a responsive proposal in lieu of the Western Municipal Water District proposal.

12. The Peace II measures collectively consist of:

(a) Watermaster's election to exercise its reserved discretion as provided in the Judgment, the Peace Agreement and the OBMP Implementation Plan, to amend the Watermaster Rules and Regulations as more fully set forth in Attachment "F" attached hereto and incorporated herein by this reference;

(b) Watermaster's execution and Court approval of the proposed Purchase and Sale Agreement with the Non-Agricultural (Overlying) Pool as more fully set forth in Attachment "G" attached hereto and incorporated herein by this reference;

(c) Watermaster's and the Court's approval of the proposed amendments to the Judgment as more fully set forth in Attachment "H", Attachment "I" and Attachment "J" attached hereto and incorporated herein by this reference;

(d) Watermaster's approval of and further agreement to act in accordance with the Peace II Agreement, including the provisions related to Future Desalters, as more fully set forth in Attachment "K" attached hereto, upon a further order of the

September 21, 2007

Court directing Watermaster to proceed in accordance with its terms;

(e) Watermaster's and the Court's approval of the 2007 Supplement to the OBMP Implementation Plan as they are more fully set forth in Attachment "D" attached hereto and incorporated herein by this reference; and

(f) Execution of the proposed Second Amendment to the Peace Agreement as more fully set forth in Attachment "L" attached hereto and incorporated herein by this reference, approval by Watermaster and a further order of the Court directing Watermaster to proceed in accordance with its terms.


13. The Overlying (Non-Agricultural), the Overlying (Agricultural) Pool, and the Appropriative Pool have approved the Peace II measures and recommended Watermaster's adoption of this Resolution 07-05

14. The Advisory Committee has approved the Peace II measures and recommended Watermaster's adoption of this Resolution 07-05.

15. In adopting this Resolution and by its agreement to implement the Peace II measures, Watermaster is not committing to carry out any project within the meaning of CEQA unless and until CEQA compliance has been demonstrated for any such project.

16. The Watermaster Board will transmit this Resolution 07-05, and the Peace II implementing measures, and the referenced Attachments to the Court along with other supporting materials and request the Court to approve the proposed Judgment Amendments and to further order that Watermaster proceed to further implement the 2007 Supplement to the OBMP as provided in the Peace II measures.

Date: 10-25-07

  
\_\_\_\_\_

for CHINO BASIN WATERMASTER

# Attachment A

September 21, 2007

**Attachment "A"**  
**Project Description**  
**for the**  
**2007 Amendment to the Chino Basin**  
**Optimum Basin Management Program**

**Introduction**

This document contains the project description for the Chino Basin desalting and re-operation programs that has been distilled from various planning investigations and was described in the Stakeholder Non-Binding Term Sheet. This document was prepared for use in: (a) Chino Basin Watermaster's evaluation of the potential actions to cause Material Physical Injury to the Basin or the Parties to the Judgment; (b) in connection with Watermaster's request for Court review and approval of proposed actions in further implementation of the Optimum Basin Management Program ("OBMP"); and (c) an environmental impact report to be prepared as part of the expansion of the desalters.

**Requirements of the 2004 Amendment to the Water Quality Control Plan for the Santa Ana Watershed**

Water quality objectives are established by the Regional Water Quality Control Board, Santa Ana Region ("Regional Board") to preserve the beneficial uses of the Chino Basin and the Orange County Basin located downstream of the Chino Basin. Prior to the 2004 Amendment, the Regional Water Quality Control Plan (Basin Plan) contained restrictions on the use of recycled water within the Chino Basin for irrigation and groundwater recharge. The pre-2004 Basin Plan contained TDS "anti-degradation" objectives that ranged from 220 to 330 mg/L over most of the Chino Basin. Ambient TDS concentrations slightly exceeded these objectives. There was no assimilative capacity for TDS; thus, the use of the Inland Empire Utilities Agency's ("IEUA") recycled water for irrigation and groundwater recharge would have required mitigation even though the impact of this reuse would not have materially impacted future TDS concentrations or impaired the beneficial uses of Chino Basin groundwater.

In 1995, the Regional Board initiated a collaborative study with 22 water supply and wastewater agencies, including Watermaster and the IEUA, to devise a new TDS and nitrogen (total inorganic nitrogen or TIN) control strategy for the Santa Ana Watershed. This study culminated in the Regional Board's adoption of the 2004 Basin Plan Amendment in January 2004 (Santa Ana Regional Water Quality Control Board, 2004). The 2004 Basin Plan Amendment included two sets of TDS objectives – antidegradation objectives that ranged between 280, 250 and 260 mg/L for Management Zones 1, 2, and 3, respectively; and a "maximum benefit"-based TDS objective of 420 mg/L for the Chino North Management Zone, which consists of almost all of Management Zones 1, 2, and 3. The relationship of the Management Zones that were developed for the OBMP and the "maximum benefit" based management zones is shown in Figure 1. Under the "maximum benefit"-based objective, the new TDS concentration limit for recycled water



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that is to be used for recharge and other direct uses is 550 mg/L as a 12-month average. This discharge requirement has been incorporated into the IEUA's National Pollutant Discharge Elimination System (NPDES) permits for its wastewater treatment facilities.

In order for the IEUA and Watermaster to gain access to the assimilative capacity afforded by the "maximum benefit"-based objectives, the IEUA and Watermaster have to demonstrate that the maximum beneficial use of the waters of the State is being achieved. The 2004 Basin Plan Amendment contains a series of commitments that must be met in order to demonstrate that the maximum benefit is being achieved. These commitments include:

1. The implementation of a surface water monitoring program;
2. The implementation of groundwater monitoring programs;
3. The expansion of Desalter I to 10 million gallons per day (mgd) and the construction of a 10-mgd Desalter II
4. The commitment to future desalters pursuant to the OBMP and the Peace Agreement;
5. The completion of the recharge facilities included in the Chino Basin Facilities Improvement Program;
6. The management of recycled water quality;
7. The management of the volume-weighted TDS and nitrogen in artificial recharge to less than or equal to the maximum benefit objectives;
8. The achievement and maintenance of hydraulic control of subsurface outflows from the Chino Basin to protect the Santa Ana River water quality; and
9. The determination of the ambient TDS and nitrogen concentrations in the Chino Basin every three years.

The IEUA and Watermaster have previously demonstrated compliance with all of these requirements with the sole exception of hydraulic control. Hydraulic control is defined as the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. Hydraulic control ensures that the water management activities in the Chino North Management Zone do not result in material adverse impacts on the beneficial uses of the Santa Ana River downstream of Prado Dam. Achieving hydraulic control also maximizes the safe yield of the Chino Basin as required by Paragraph 30 and 41 of the Judgment. Two reports by Wildermuth Environmental, Inc. ("WEI"), prepared in 2006 at the direction of Watermaster, demonstrate that hydraulic control has not yet been achieved in the area between the Chino Hills and Chino Desalter I, well number 5 (WEI, 2006a and b).

Without hydraulic control, the IEUA and Watermaster will have to cease the use of recycled water in the Chino Basin and will have to mitigate the effects of using recycled water back to the adoption of the 2004 Basin Plan Amendment, which is December 2004. The demand for recycled water in the Chino Basin is projected to reach from about 12,500 acre-ft/yr in 2005 to 58,000 acre-ft/yr in 2010, 68,000 acre-ft/yr in 2015, 79,000 acre-ft/yr in 2020 and 89,000 acre-ft/yr in 2025. Recycled water reduces the demand of

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State Water Project ("SWP") water by an equal amount, thereby reducing the demand on the Sacramento Delta and reducing energy consumption. Recycled water is a critical element of the OBMP and water supply reliability in the Chino Basin area.

Failure to achieve hydraulic control could lead to restrictions from the Regional Board on the use of imported SWP water for replenishment when the TDS concentration in SWP water exceeds the antidegradation objectives. The Regional Board produced a draft order that would treat the recharge of SWP water as a waste discharge. There would be no assimilative capacity if the Chino Basin antidegradation objectives were in force. Figure 2 shows the percent of time that the TDS concentration at Devil Canyon is less than or equal to a specific value based on observed TDS concentrations at the Devil Canyon Afterbay. This restriction will occur about 35, 52, and 50 percent of the time for Management Zones 1, 2, and 3, respectively. This will affect other basins in the Santa Ana Watershed, and the Regional Board is encouraging all basin managers to propose "maximum benefit"-based objectives similar to those in Chino Basin. With the "maximum benefit"-based TDS objective in the Chino Basin, there is assimilative capacity, and there would be no such restriction on the recharge of imported water.

The Regional Board is using its discretion in granting "maximum benefit" objectives even though hydraulic control has not been demonstrated. The Regional Board will continue to use "maximum benefit"-based objectives in the Chino Basin as long as the IEUA and Watermaster continue to develop and implement, in a timely manner, the OBMP desalter program as described in the project description below.

### **The Stakeholder Non-Binding Term Sheet: Peace II Implementing Measures**

Under Watermaster oversight, the Chino Basin OBMP stakeholders have been engaged in, among other things, complying with the Peace Agreement provision regarding the planning and financing of the expansion of the OBMP desalting program to its full planned capacity generally referred to as Future Desalters (See Peace Agreement Article VII.). The stakeholders have been evaluating various alternatives since early 2004 and produced the Stakeholders' Non-Binding Term Sheet that was transmitted to the Court along with a request by Watermaster for further technical review by the Assistant to the Special Referee in May of 2006. The Assistant's review was completed in March of 2007.

The Non-Binding Term Sheet includes several items that will collectively further implement the existing OBMP Implementation Plan (Peace II Measures). The two items of interest to this project description are: the expansion of the desalting program and "Basin Re-Operation," which are both physically described in Section II, Refined Basin Management Strategy, subsections A and B; and Section IV, Future Desalters.

The construction of a new desalter well field will be sized and located to achieve hydraulic control. The desalter will produce at least 9 mgd of product water. New groundwater production for the expanded desalter program will occur in the Southern end of the basin. Some of this new desalter supply will come from a new well field that will

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be constructed in a location among Desalter I wells 1 through 4 and west of these wells. These wells will be constructed to pump groundwater from the shallow part of the aquifer system, which is defined herein to be the saturated zone that occurs within about 300 feet of the ground surface. The total groundwater pumping for all of the desalters authorized in the term sheet will be about 40,000 acre-ft/yr.

“Re-operation” means the increase in controlled overdraft, as defined in the Judgment, from 200,000 acre-ft over the period of 1978 through 2017 to 600,000 acre-ft through 2030 with the 400,000 acre-ft increase allocated specifically to the meet the replenishment obligation of the desalters. Re-operation is required to achieve hydraulic control. Re-Operation and Watermaster’s apportionment of controlled overdraft will not be suspended in the event Hydraulic Control is secured in any year *before* the full 400,000 acre-feet has been produced so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures to avoid Material Physical Injury and that equitably addresses this contingency, and (ii) Watermaster continues to demonstrate credible material progress toward obtaining sufficient capacity to recharge sufficient quantities of water to cause the Basin to return to a new equilibrium at the conclusion of the Re-Operation period. In addition to contributing to the achievement of hydraulic control, Re-operation will contribute to the creation of new yield. Watermaster has the discretion to apportion the 400,000 acre-feet increase in controlled overdraft under a schedule for re-operation that best meets the needs of the Parties and the conditions of the basin over the Initial Term of the Peace Agreement (before June 30, 2030).

### **The Project Description**

The proposed project has two main features: the expansion of the desalter program such that the groundwater pumping for the desalters will reach about 40,000 acre-ft and that the pumping will occur in amounts and at locations that contribute to the achievement of hydraulic control; and the strategic reduction in groundwater storage (re-operation) that, along with the expanded desalter program, significantly achieves hydraulic control.

**The Expanded Desalting Program.** A new well field, referred to as the Chino Creek Well Field (CCWF), will be constructed. The capacity of this well field could range from about 5,000 acre-ft/yr to 7,700 acre-ft/yr. The capacity of the CCWF will be determined during the design of the well field. Groundwater produced at the CCWF will be conveyed to Desalter I. The approximate location of the CCWF is shown in Figure 3. The capacity of Desalter I will not be increased; although, it is likely that the treatment systems at Desalter I will be modified to accommodate the chemistry of the raw water pumped from the CCWF. The product water capacity of Desalter I is about 14,200 acre-ft/yr which corresponds to a raw water pumping requirement of about 16,100 acre-ft/yr. The volume of groundwater pumping at existing Desalter I wells 13, 14, and 15 and conveyed to Desalter I will be reduced to accommodate new pumping at the CCWF.

The treatment capacity of Desalter II will be increased from 10,400 acre-ft/yr to about 21,000 acre-ft/yr, which corresponds to the raw water pumping requirement of 11,800



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acre-ft/yr expanding to 23,900 acre-ft/yr. The increase in groundwater pumping for Desalter II will come in part from greater utilization of the existing Desalter II wells and the addition of new wells to the Desalter II well field from either the construction of new wells and/or connecting Desalter I wells 13, 14, and 15.

The new product water developed at Desalter II would be conveyed to the Jurupa Community Services District ("JCSD"), the City of Ontario, and/or Western Municipal Water District ("WMWD") through existing and new pipelines. The facilities required to convey this water include pipelines, pump stations, and reservoirs. The precise locations of these facilities are unknown at this time.

The most current working description of these facilities is contained a report that was prepared for the City of Ontario and WMWD, entitled Chino Desalter Phase 3 Alternatives Evaluation (Carollo, 2007). Currently (September 2007), the City of Ontario and the WMWD are working with the JCSD and others to refine the alternatives in the Carollo report. The assumed startup for the expanded desalters is January 2013.

Finally, 40,000 acre-ft/yr of groundwater is expected to be produced by all Existing and Future Desalters. The parties that are engaged in developing the desalter expansion are planning for a total of 40,000 acre-ft/yr of desalter groundwater pumping. Watermaster, on behalf of the Parties, will review the desalter pumping requirements to achieve hydraulic control during the project evaluation in the summer and fall of 2007.

**Re-Operation.** Through re-operation and pursuant to a Judgment Amendment, Watermaster will engage in controlled overdraft and use up to a maximum of 400,000 acre-ft to off-set Desalter replenishment through 2030. After the 400,000 acre-ft is exhausted and the period of Re-Operation is complete, Watermaster will recalculate the safe yield of the basin. The Re-Operation will have no impact on Operating Safe Yield or on the parties' respective rights thereto. For project evaluation purposes, the Re-Operation and controlled overdraft of 400,000 will be examined under two different schedules that bracket the range in expected schedules. The first schedule will be based on allocating the 400,000 acre-ft at a constant percentage of desalter pumping such that the 400,000 acre-ft is used up in a constant proportion of the desalter pumping through 2030. The second schedule will use the controlled overdraft to off-set desalter the applicable replenishment obligation completely each year until the 400,000 acre-ft is completely exhausted.

The New Yield as defined by the Peace Agreement, attributable to the authorized desalters and the reduction in storage from re-operation, will be assigned to the authorized desalters. The resulting replenishment obligation assigned to the authorized desalters will then be handled as any other replenishment obligation pursuant to the Judgment. The New Yield is expected to come from a reduction in groundwater discharge from the Chino Basin to the Santa Ana River within the reservoir created by Prado Dam and from new induced recharge of the Santa Ana River upstream of Prado Dam.



### **Other Important Facility and Operational Plans that Will Occur Concurrently with the Proposed Project**

**Expansion of Artificial Recharge Capacity.** Watermaster and the IEUA will need to expand artificial recharge capacity in the Chino Basin to meet future replenishment obligations. This will occur independently from the proposed project. Current supplemental water recharge capacity is about 91,000 acre-ft/yr. The required recharge capacity to meet future replenishment obligations is about 150,000 acre-ft, a capacity expansion of about 59,000 acre-ft/yr. This expansion will occur through construction of new spreading basins, improvements to existing spreading basins and stormwater retention facilities, aquifer storage and recovery wells. The proposed project will be analyzed without recharge expansion projects.

**Expansion of Storage and Recovery Programs.** Currently, there is only one groundwater storage program approved in the Chino Basin: the 100,000 acre-ft Dry Year Yield Program with the Metropolitan Water District of Southern California (Metropolitan). Metropolitan, the IEUA, and Watermaster are considering expanding this program an additional 50,000 acre-ft to 150,000 acre-ft over the next few years. Watermaster is also considering an additional 150,000 acre-ft in programs with non-party water agencies. The total volume of groundwater storage allocated to storage programs that could overlay the proposed project is about 300,000 acre-ft.

These storage programs, if not sensitive to the needs of hydraulic control, could cause groundwater discharge to the Santa Ana River and result in non-compliance with hydraulic control and a loss in safe yield. There have been no planning investigations that articulate how the expansion from the existing 100,000 acre-ft program to the future 300,000 acre-ft set of programs will occur and thus this expansion is not included herein

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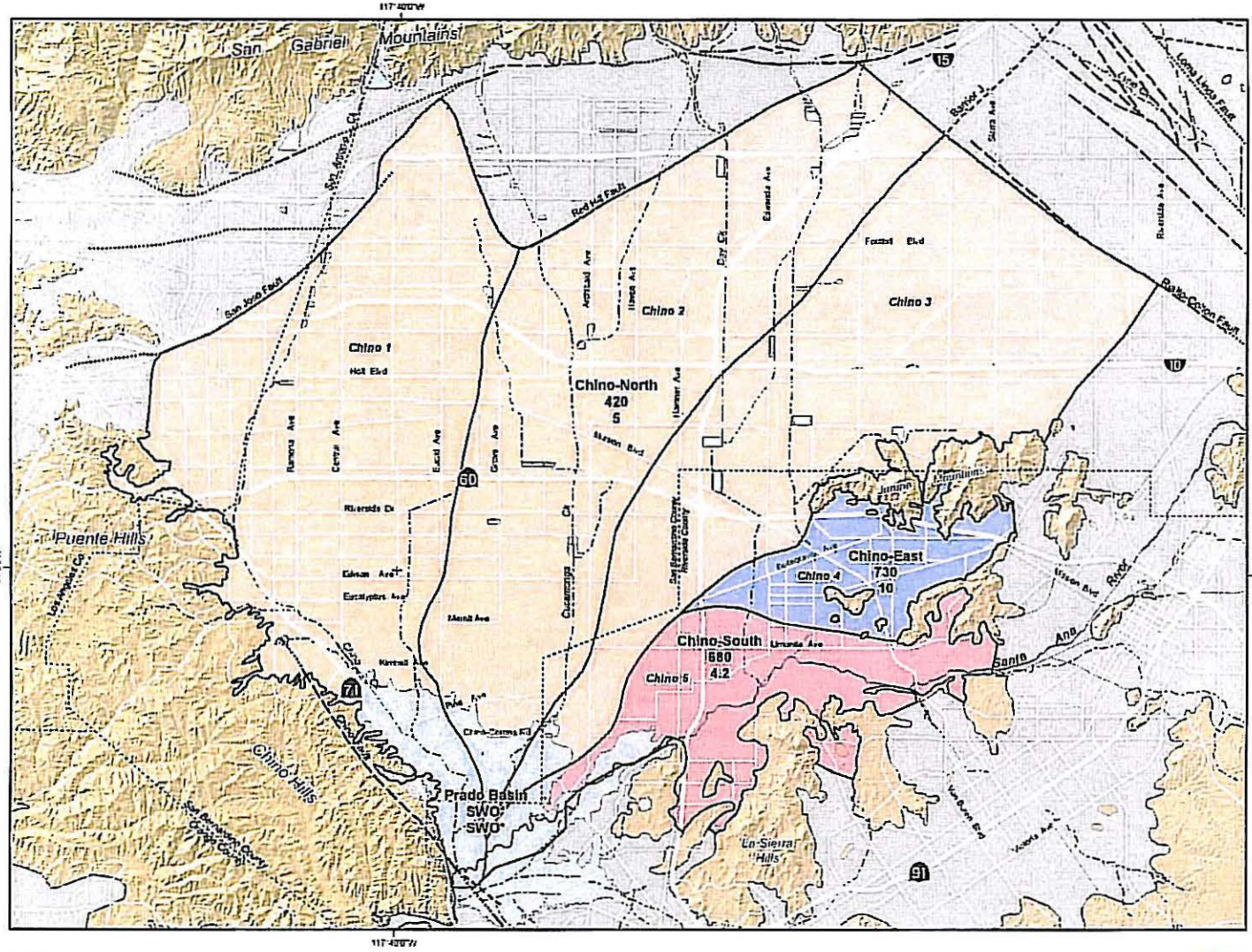
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September 21, 2007

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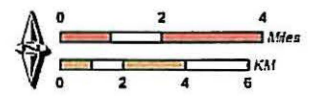


- Management Zone Labeling Key**
- Chino-North Management Zone Name
  - 293 TDS Maximum Benefit Objective
  - 4.9 Nitrate Maximum Benefit Objective
  - \*SOW = Surface Water Objective
  - OBMP Management Zone Boundary
- Other Features**
- Rivers, Creeks, and Flood Control Channels
  - Flood Control & Conservation Basins
- Geology**
- Unconsolidated Water-Bearing Sediments
  - Consolidated Bedrock
- Faults**
- Location Certain
  - Location Approximate
  - Location Concealed
  - Location Uncertain



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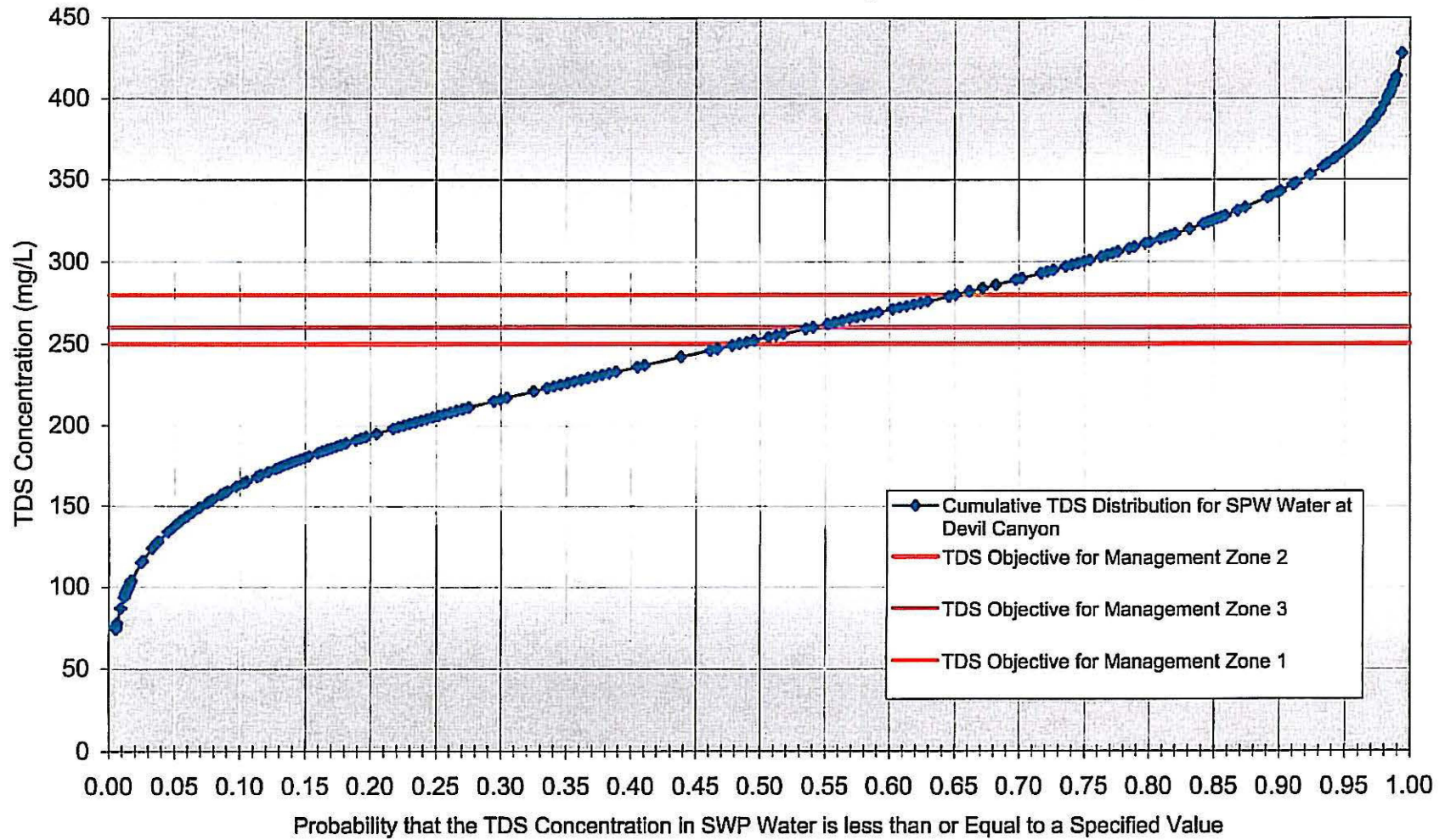
  
 Chino Basin Optimum Basin Management Program  
 Peace II Amendment (2007)

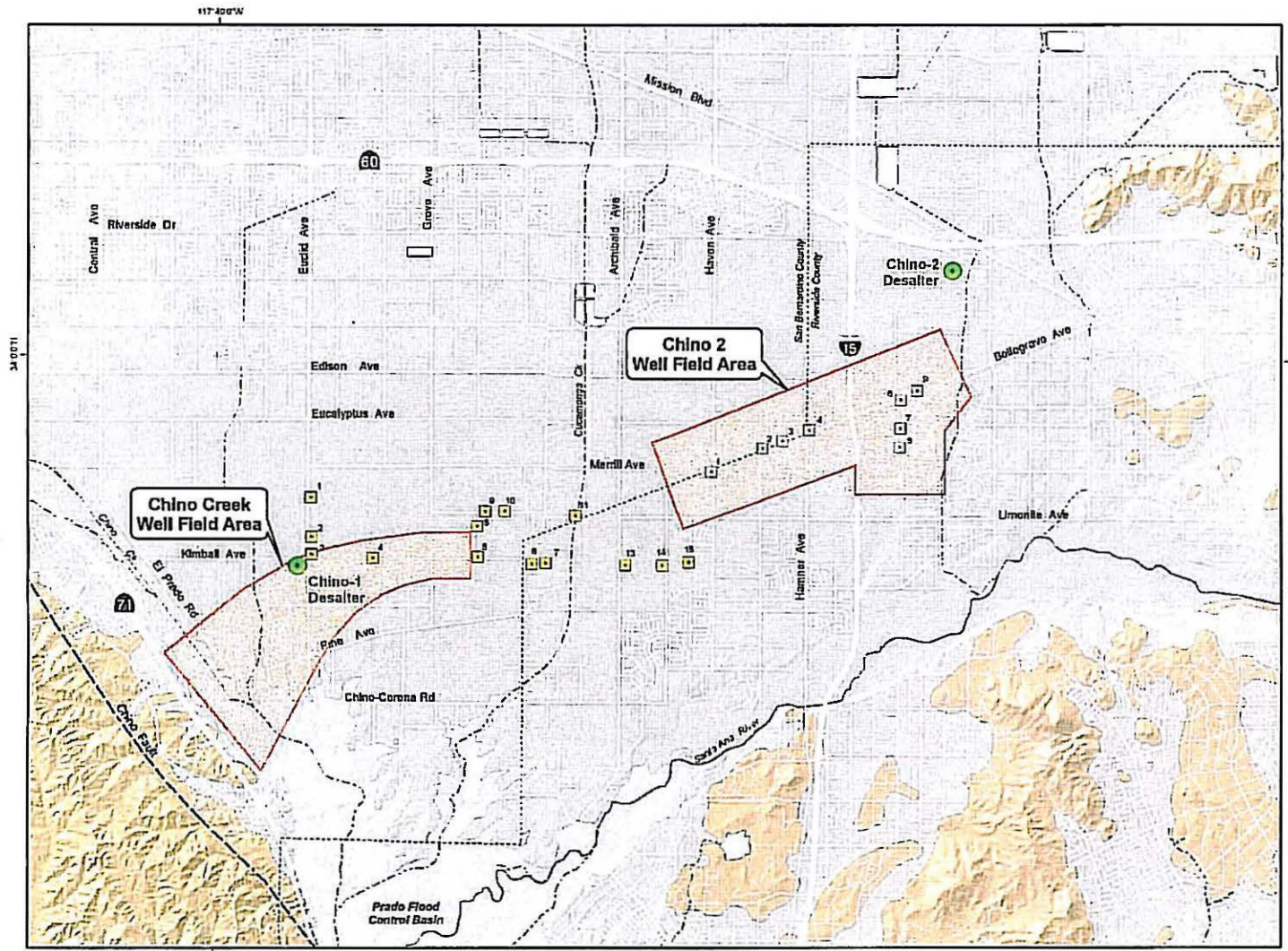
**Comparison of OBMP Management Zones and RWQCB Basin Plan Management Zones**

**Figure 1**



**Figure 2**  
**Historical TDS Concentration in State Water Project Water at Devil Canyon**



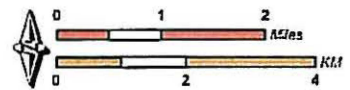


- Main Features**
- Chino-1 Desalter Well (Existing)
  - Chino-2 Desalter Well (Existing)
  - Desalter Facility
- Geology**
- Unconsolidated Water-Bearing Sediments
  - Consolidated Bedrock
- Faults**
- Location Certain
  - Location Approximate
  - Location Concealed
  - Location Uncertain



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 Date: 2007-10-25  
 File: Fypos\_3.mxd



Chino Basin Optimum Basin Management Program  
 Phase II Amendment (2007)

Existing Desalter Wells,  
 Proposed Chino Creek Well Field,  
 and Chino 2 Expansion Well Field

Figure 3



# Attachment B

# **Analysis of Aggregate Costs and Benefits of Hydraulic Control, Basin Re-Operation and Desalter Elements of Non-Binding Term Sheet**

Prof. David Sunding  
UC Berkeley

November 29, 2006

## **Summary**

The report measures the economic costs and benefits of achieving hydraulic control through re-operation of the Chino Basin. Various scenarios are considered in the analysis, with scenarios chosen to reflect uncertainty regarding future values of water, the time path of annual overdrafts selected to dewater the basin, and the use of the resulting induced inflow from the Santa Ana River. As shown in Table 1, depending on the scenario chosen, the net benefits of achieving hydraulic control through basin re-operation range between \$283.1 million and \$438.8 million in 2006 dollars.

### **1. Introduction**

Hydraulic control refers to the elimination or reduction to negligible quantities of discharge from the Chino North Management Zone to the Santa Ana River. Basin re-operation is defined as the increase in controlled overdraft as defined in the Judgment from 200,000 acre-feet over the period 1978 through 2017, to 600,000 acre-feet through 2030 with the 400,000 acre-feet allocated specifically to meet the replenishment obligation of the desalters.

### **2. Framework**

The model of groundwater value used in this report is standard in the academic literature.<sup>1</sup> The net benefits in each period resulting from access to a groundwater resource are the gains from pumping (i.e., the demand for water) minus the costs of extraction in the current period and a "user cost" term that reflects the change in future consumption possibilities resulting from current choices. The stream of annual net benefits is then discounted back to current dollars using a discount factor predicated on the rate of interest.

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<sup>1</sup> Brozovic, N., D. Sunding and D. Zilberman, "Optimal Management of Groundwater Over Space and Time." *Frontiers in Water Resource Economics*. D. Berga and R. Goetz, eds. New York: Springer-Verlag, 2005; Gisser, M., and Sanchez, D.A. "Competition versus Optimal Control in Groundwater Pumping." *Water Resources Research* (1980): 638-642; Brown, G., Jr., and Deacon, R. "Economic Optimization of a Single-Cell Aquifer." *Water Resources Research* (1975): 557-564.

The interest rate used in the analysis is 5.5%. This rate corresponds to the current risk-free long-term rate of interest, a relevant rate for public agencies with good credit. The discount factor for a payment occurring in some future period  $t$  is then  $(1.055)^{-t} \approx e^{-0.055t}$ .

Let  $y_t$  denote groundwater produced during period  $t$ , and  $x_t$  equal the stock of groundwater at beginning of period  $t$ . The value of the groundwater resource is then

$$Value = \sum_{t=0}^{\infty} (1+r)^{-t} [B(y_t) - C(x_t, y_t)],$$

where  $B(y_t)$  denotes the benefits from groundwater production in period  $t$ , and  $C(x_t, y_t)$  is the cost of extraction and recharge. In an economic optimization model, the problem is to find the time path of production and stock that maximizes the present value of access to the aquifer, subject to physical constraints such as the equation of motion  $x_{t+1} = x_t + g(x_t, y_t) - y_t$  (where  $g(x_t, y_t)$  denotes natural and artificial recharge) and regulatory constraints such as water quality objectives and requirements to operate the basin in a steady-state condition.

Viewed this way, basin re-operation and its alternatives can be modeled as different evolutions of production, stock and recharge. The net benefit of a particular basin re-operation strategy versus a baseline that maintains the current stock of groundwater is the difference of present value resulting from a particular choice of these policy variables.

The study period extends indefinitely into the future, but the period between the present and 2030 is modeled in more detail. This feature results from the fact that the Peace Agreement lasts until 2030, and more detailed environmental and water use modeling is available to this date. As described below, terminal values are assigned to key parameters from 2031 on, and at this point the groundwater system in the Chino Basin is assumed to enter into a steady state, with no expected change in production, groundwater elevation or recharge amounts.

Table 2 displays the assumptions made about groundwater production from the Chino Basin. All figures in the table are common to all scenarios considered, and thus these assumptions are not the basis for differences in value between scenarios. The table shows groundwater production increasing steadily throughout the study period. Desalter production is also increasing throughout the study period. Operating yield is set at 145,000 acre-feet through 2017, at which point it declines to 140,000 acre-feet annually. Finally, new stormwater recharge is assumed to be 12,000 acre-feet annually.

It is necessary to describe a scenario without basin re-operation in order to calculate the net benefits, if any, from this type of strategy. Table 3 displays the physical consequences of such an alternative. If the basin is not de-watered, then hydraulic control will not be achieved, and there will be water quality costs as a result. One such consequence is that relatively high-quality water must be used for recharge. In particular, the Basin would lose the ability to use relatively inexpensive recycled water for replenishment purposes



and would be forced to use water purchased from MWD instead.<sup>2</sup> Thus, Table 3 shows that the entire replenishment obligation for both normal and desalter production is met through the purchase of replenishment water from MWD.

In the event that hydraulic control is achieved, there are two types of benefits to the Chino Basin as a whole. The first benefit relates to water quality. As discussed above, if hydraulic control is achieved, then recycled water can be used for 30% of the total Basin replenishment obligation, up to an assumed capacity of 30,000 acre-feet annually.<sup>3</sup> The second benefit is that lowering the groundwater elevation in the Basin induces an inflow of water from the Santa Ana River. Specifically, forgiving a reduction in the stock of groundwater in the Basin results in an average of 9,900 acre-feet annually until the 400,000 acre-feet of depletion credits are exhausted, and then 12,500 acre-feet annually thereafter. This natural recharge is new yield in the Basin; as discussed below, it can be used either for reducing the desalter replenishment obligation or as an asset in its own right.

### 3. Scenarios

The valuation model is implemented under a variety of assumptions about how re-operation will occur, how the Santa Ana River inflows are treated, and the level of future water prices. This section describes the construction of alternative scenarios.

#### *Implementation of Basin Re-Operation*

The basic principle of basin re-operation is that it is a means of achieving hydraulic control by increasing cumulative overdraft by 400,000 acre-feet through 2030. Overdraft is to be achieved by forgiving the replenishment obligation of the desalters by some annual amount over a defined period of time. This general principle is silent about *how* the total quantity of forgiveness of desalter replenishment is to be allocated over time.

This analysis considers two possible implementation scenarios. The first scenario, termed the straightline alternative, envisions an annual overdraft of 20,346 acre-feet occurring until 2030, at which time the annual overdraft would fall to zero and the system is assumed to enter into a new steady-state from 2031 onward. The second scenario, called the most rapid depletion path alternative, sets the annual overdraft to eliminate the desalter replenishment obligation for as long as possible.

Tables 4 and 7 display annual overdraft amounts under these two alternatives for implementing basin re-operation. As described, the straightline alternative entails constant annual overdraft quantities, resetting to zero from 2031 onwards. The most rapid

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<sup>2</sup> Alternatively, recycled water would have to be desalted prior to recharge. Costs are not available at this time for this option.

<sup>3</sup> Assumptions provided by Watermaster staff. If hydraulic control is achieved, it may be possible to increase this limit. In this case, the benefits resulting from basin re-operation would increase.

depletion path reaches a maximum annual overdraft of 30,289 acre-feet before dropping to zero in 2020.

#### *Allocation of Induced Santa Ana River Inflow*

A second dimension along which the scenarios vary is with regard to the allocation of Santa Ana River inflows induced by the reduction of the groundwater stock. A total of 12,500 acre-feet of new yield is assumed to result from the dewatering, and the scenarios differ in terms of the use of this new yield. One scenario allocates all Santa Ana River inflows from re-operation to reducing the desalter replenishment obligation. An alternative scenario treats these inflows as a resource to be used for any purpose; consequently, desalter replenishment obligations are higher under this assumption.

Tables 5 and 6 relate to the straightline depletion case and show replenishment obligations and sources under the two Santa Ana River inflow allocation alternatives. In Table 5, new yield is allocated to desalter replenishment, and the desalter replenishment obligation is negligible in the near term and reaches a maximum of 9,943 acre-feet during the study period. In Table 6, by contrast, total replenishment obligations are higher since the new yield can be used for any chosen purpose.

Tables 8 and 9 show replenishment obligations under the most rapid depletion path scenario. Results are similar as in the straightline depletion scenario, with the exception that desalter replenishment is forestalled until 2025 if new yield is allocated to this purpose.

#### *Future Water Prices*

Given the important role of relative prices in the economic analysis, and given uncertainties regarding the evolution of water values in Southern California, the analysis considers two alternative scenarios regarding future water prices. These scenarios are taken from MWD and are commonly referred to as the high rate and low rate scenarios. MWD scenarios cover Tier 1 and Tier 2 water, as well as replenishment water. The high rate scenario has the Tier 2 rate growing at an annual rate of 3.11% for the next five years, and then by 4.50% from 2011 to 2030. The replenishment rate grows at 6.94% through 2011, and then at 4.50% to 2030. In the low rate scenario, the Tier 2 rate grows by 2.28% annually for the next five years, and then by 3.00% from 2011 to 2030. The replenishment rate is assumed to grow by 4.79% through 2011, and by 3.00% thereafter.

The current price of recycled water for replenishment is assumed to be \$69 per acre-foot.<sup>4</sup> In the high rate scenario, this price was assumed to grow at the same rate of inflation as

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<sup>4</sup> One public comment received after the July 26, 2006 presentation stated that the actual price paid for recycled water should be used in the analysis. While this price is not yet known, it is likely to exceed \$69 per acre-foot. Note, however, that this study considers the aggregate costs and benefits of elements of the non-binding term sheet. Thus, changes in the price of recycled water have distributional as opposed to efficiency effects, that is, they change the relative level of benefits enjoyed by the parties in the Chino Basin rather than affecting the total level of benefits.

the Tier 2 and MWD replenishment prices: 4.50%. Similarly, the recycled water price grows by 3.00% annually in the low rate scenario.

#### 4. Other Effects of Basin Re-Operation

An additional benefit of hydraulic control is a reduction in storage losses. Measuring the value of reduced storage losses is conditioned on several factors that are not fully known at present. Of course, the ex post performance of any groundwater storage program depends on the sequence of puts and takes, which depend in turn on the sequence of wet and dry years. Based on conversations with Watermaster staff, the groundwater storage program is assumed to be 400,000 acre-feet over the study period, but may range from 300,000 to 500,000 acre-feet.<sup>5</sup> Calculations provided by Wildermuth Environmental detail the relationship between average storage over the life of the MWD Dry Year Yield program and associated losses at 0.66 and 2 percent. Table 12 summarizes cumulative losses through 2028, together with present values calculated using the high and low rate scenarios for MWD replenishment rates as described above.

Assuming 2 percent loss and a 400,000 acre-foot storage program, the present value of reduced storage losses is \$24.9 million in 2006 dollars in the high rate scenario and \$20.4 million in the low rate scenario. These calculations are performed ex ante, and the actual magnitude of reduced storage losses will depend on factors including the size of the storage program, the percentage storage loss, the timing of puts and takes, and the actual replenishment rates charged by MWD. For the purpose of aggregating reduced storage loss benefits with other benefits and costs of basin re-operation, we will assume a 400,000 acre-foot storage program for both the high and low rate scenarios with storage losses equal to half of the amounts in Table 12 (recall that storage losses could range from 0 to 2 percent). The corresponding values of reduced storage losses are \$12.4 million and \$10.2 million for the high and low rate scenarios, respectively.

Achieving hydraulic control through basin re-operation will also result in higher pumping costs since forgiveness of the desalter replenishment operation is intended to lower the groundwater elevation in certain regions. The information needed to calculate the present value of increased pumping costs includes the quantity-weighted average change in lift in the Basin resulting from re-operation, the energy requirement per unit lift and energy costs per kilowatt-hour. Wildermuth Environmental provided the weighted average changes in groundwater elevation. The price of electricity is assumed to be \$0.14/kwh, and the pumping efficiency is taken to be 75 percent. The California Energy Commission forecasts that commercial and agricultural electricity rates charged by investor-owner utilities operating in California will decline slightly in nominal terms until 2013, when

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<sup>5</sup> The Peace Agreement provides that there is Target Storage of 500,000 acre-feet *in excess* of then existing storage, whereas this report only considers the Safe Harbor quantity of 500,000 acre-feet of storage in total. In some sense, there is a tradeoff between the decision to pursue max-benefit and the feasibility of obtaining the higher amount of storage. It should also be noted, however, that the basin is at the limit of shift capacity for export, and expansion of recharge to achieve greater storage is costly. Further, the PEIR only considered an additional 250,000 acre-feet of storage.

their forecast terminates.<sup>6</sup> This analysis assumes that nominal electricity prices are constant.

Combining this information, increased pump lift costs have a present value of \$14.9 million in the straightline depletion scenario. In the rapid pulldown scenario, re-operation has a larger impact on the present value of energy costs since the groundwater elevation is reduced to the same level but at an earlier date. Increased energy costs have a present value of \$19.4 million in this scenario. Both calculations include increased energy costs in the new basin steady state achieved after 2030.

## 5. Results

Table 1 summarizes the results of the economic analysis. The figures in the table are the net benefits resulting from access to the Chino Basin aquifer under the alternative management and price scenarios described in the previous section. In all cases, basin re-operation results in aggregate net benefits. However, there are significant differences in net benefits depending on the realization of future water prices and the use of Santa Ana River inflows induced by reducing the stock of groundwater. The rapidity with which basin re-operation is implemented matters less.

When Santa Ana River inflow is allocated to desalter replenishment and overdraft occurs in constant annual amounts to 2030, basin re-operation results in gains of between \$283.1 and \$391.4 million in present value terms, depending on the growth of water prices and how the replenishment credit is used over time. These gains result from the ability to use recycled water for a fraction of recharge if hydraulic control is achieved, the value of new yield, and the value of the forgiven desalter replenishment.<sup>7</sup>

Since new yield is reliable, in any case more reliable than a supply of replenishment water, allocating it to desalter replenishment would seem to be inefficient. The Tier 2 rate is well above the price of replenishment water, which is a weighted average of the MWD replenishment rate and the price of recycled water. When Santa Ana River inflows are decoupled from replenishment obligations, the gains from straightline basin re-operation are between \$341.9 and \$438.8 million.

There is a small increase in the net benefits of basin re-operation when the most rapid overdraft strategy is implemented. Several factors explain this result. First, in the most rapid depletion scenario, the 30,000 acre-foot constraint on annual recycling recharge binds more frequently. Accordingly, less recycled water is recharged over the study

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<sup>6</sup> [http://www.energy.ca.gov/electricity/rates\\_iou\\_vs\\_muni\\_nominal/medium\\_commercial.html](http://www.energy.ca.gov/electricity/rates_iou_vs_muni_nominal/medium_commercial.html);  
[http://www.energy.ca.gov/electricity/rates\\_iou\\_vs\\_muni\\_nominal/agricultural.html](http://www.energy.ca.gov/electricity/rates_iou_vs_muni_nominal/agricultural.html)

<sup>7</sup> Another potential source of loss is the option value of the water taken from the groundwater stock. That is, water used to avoid desalter replenishment is water that is not available in the event of a major disruption in surface water supplies to the region. Given the difficulty of describing and quantifying these future states of nature, option values have not been calculated. However, conversations with Watermaster staff indicate that dewatering will not result in any meaningful loss of operational flexibility since the percentage depletion of the aquifer envisioned through re-operation is relatively small.

period under this scenario. Second, while the most rapid depletion strategy delays replenishment, it also hastens the date at which a large replenishment obligation occurs once the desalter replenishment forgiveness of 400,000 acre-feet is exhausted.<sup>8</sup> Given the relatively low real discount rate used in this study (i.e., the nominal discount rate minus the rate of growth of water prices), it is not surprising that dynamic factors such as this do not have a large effect on net benefits.

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<sup>8</sup> This study has not considered the capital and operating costs of expanding recharge capacity. Allocating Santa Ana River inflows to desalter replenishment delays the date at which capacity is exceeded, as does the most rapid depletion strategy.

**Table 1: Net Benefits of Hydraulic Control, Basin Re-Operation and Desalter Production**

(Figures in millions of 2006 dollars)

*Gain Over Baseline: SAR Inflow Allocated to Desalter Replenishment*

	<i>High Rate</i>	<i>Low Rate</i>
<i>Straightline</i>	388.6	283.1
<i>Most Rapid</i>	391.4	288.4

*Gain Over Baseline: SAR Inflow Unallocated*

	<i>High Rate</i>	<i>Low Rate</i>
<i>Straightline</i>	436.2	341.9
<i>Most Rapid</i>	438.8	347.7

Source: Calculated.

**Table 2: Production, Operating Yield and Stormwater Recharge**

<i>Year</i>	<i>Total Production</i>	<i>Chino Desalter Production</i>	<i>Operating Yield</i>	<i>New Stormwater Recharge</i>
2006	223,505	30,019	145,000	12,000
2007	230,566	31,923	145,000	12,000
2008	237,634	33,827	145,000	12,000
2009	244,702	35,731	145,000	12,000
2010	251,874	37,748	145,000	12,000
2011	251,768	38,980	145,000	12,000
2012	251,661	40,212	145,000	12,000
2013	251,551	41,445	145,000	12,000
2014	251,557	42,789	145,000	12,000
2015	250,216	42,789	145,000	12,000
2016	250,427	42,789	145,000	12,000
2017	250,640	42,789	145,000	12,000
2018	250,851	42,789	140,000	12,000
2019	251,060	42,789	140,000	12,000
2020	251,270	42,789	140,000	12,000
2021	254,049	42,789	140,000	12,000
2022	256,827	42,789	140,000	12,000
2023	259,605	42,789	140,000	12,000
2024	262,384	42,789	140,000	12,000
2025	265,163	42,789	140,000	12,000
2026	266,133	42,789	140,000	12,000
2027	267,104	42,789	140,000	12,000
2028	268,074	42,789	140,000	12,000
2029	269,044	42,789	140,000	12,000
2030	270,014	42,789	140,000	12,000

Source: Wildermuth Environmental.



**Table 3: Replenishment Obligations and Sources – No Basin Re-Operation**

<i>Year</i>	<i>Normal Production Replenishment Obligation</i>	<i>Chino Desalter Replenishment Obligation</i>	<i>MWD Replenishment</i>	<i>Recycling Replenishment</i>
2006	36,487	30,019	66,505	0
2007	41,643	31,923	73,566	0
2008	46,806	33,827	80,634	0
2009	51,970	35,731	87,702	0
2010	57,126	37,748	94,874	0
2011	55,788	38,980	94,768	0
2012	54,448	40,212	94,661	0
2013	53,107	41,445	94,551	0
2014	51,768	42,789	94,557	0
2015	50,427	42,789	93,216	0
2016	50,638	42,789	93,427	0
2017	50,851	42,789	93,640	0
2018	56,062	42,789	98,851	0
2019	56,271	42,789	99,060	0
2020	56,482	42,789	99,270	0
2021	59,260	42,789	102,049	0
2022	62,038	42,789	104,827	0
2023	64,816	42,789	107,605	0
2024	67,595	42,789	110,384	0
2025	70,374	42,789	113,163	0
2026	71,344	42,789	114,133	0
2027	72,315	42,789	115,104	0
2028	73,285	42,789	116,074	0
2029	74,255	42,789	117,044	0
2030	75,225	42,789	118,014	0

Source: Calculated.

Normal Production Replenishment Obligation = Total Production – Desalter Production  
– Operating Yield – New Stormwater Recharge

Desalter Replenishment Obligation = Desalter Production



**Table 4: Overdraft and SAR Inflow – Straightline Depletion Scenario**

<i>Year</i>	<i>Annual Overdraft</i>	<i>Cumulative Overdraft</i>	<i>SAR Inflow</i>
2006	16,000	16,000	9,900
2007	16,000	32,000	9,900
2008	16,000	48,000	9,900
2009	16,000	64,000	9,900
2010	16,000	80,000	9,900
2011	16,000	96,000	9,900
2012	16,000	112,000	9,900
2013	16,000	128,000	9,900
2014	16,000	144,000	9,900
2015	16,000	160,000	9,900
2016	16,000	176,000	9,900
2017	16,000	192,000	9,900
2018	16,000	208,000	9,900
2019	16,000	224,000	9,900
2020	16,000	240,000	9,900
2021	16,000	256,000	9,900
2022	16,000	272,000	9,900
2023	16,000	288,000	9,900
2024	16,000	304,000	9,900
2025	16,000	320,000	9,900
2026	16,000	336,000	9,900
2027	16,000	352,000	9,900
2028	16,000	368,000	9,900
2029	16,000	384,000	9,900
2030	16,000	400,000	9,900

Sources: Annual and Cumulative Overdraft: Assumed; SAR Inflow, Wildermuth Environmental.

**Table 5: Replenishment Obligations and Sources – Straightline Depletion Scenario with SAR Inflow Allocated to Desalter Replenishment**

<i>Year</i>	<i>Normal Production Replenishment Obligation</i>	<i>Chino Desalter Replenishment Obligation</i>	<i>MWD Replenishment</i>	<i>Recycling Replenishment</i>
2006	36,487	4,119	28,424	12,182
2007	41,643	6,023	33,366	14,300
2008	46,806	7,927	38,314	16,420
2009	51,970	9,831	43,261	18,541
2010	57,126	11,848	48,282	20,692
2011	55,788	13,080	48,208	20,660
2012	54,448	14,312	48,133	20,628
2013	53,107	15,545	48,056	20,595
2014	51,768	16,889	48,060	20,597
2015	50,427	16,889	47,121	20,195
2016	50,638	16,889	47,269	20,258
2017	50,851	16,889	47,418	20,322
2018	56,062	16,889	51,065	21,885
2019	56,271	16,889	51,212	21,948
2020	56,482	16,889	51,359	22,011
2021	59,260	16,889	53,304	22,845
2022	62,038	16,889	55,249	23,678
2023	64,816	16,889	57,194	24,512
2024	67,595	16,889	59,139	25,345
2025	70,374	16,889	61,084	26,179
2026	71,344	16,889	61,763	26,470
2027	72,315	16,889	62,443	26,761
2028	73,285	16,889	63,121	27,052
2029	74,255	16,889	63,801	27,343
2030	75,225	16,889	64,480	27,634

Source: Calculated.

Normal Production Replenishment Obligation = Total Production – Desalter Production – Operating Yield – New Stormwater Recharge

Desalter Replenishment Obligation = Desalter Production – Annual Overdraft – SAR Inflow

Recycling Replenishment = min[0.3\*(Normal Production Replenishment Obligation + Desalter Replenishment Obligation), 30,000]

MWD Replenishment = Normal Production Replenishment Obligation + Desalter Replenishment Obligation - Recycling Replenishment

**Table 6: Replenishment Obligations and Sources – Straightline Depletion Scenario with SAR Inflow Unlocated**

<i>Year</i>	<i>Total Replenishment Obligation</i>	<i>MWD Replenishment</i>	<i>Recycling Replenishment</i>
2006	50,505	35,354	15,152
2007	57,566	40,296	17,270
2008	64,634	45,244	19,390
2009	71,702	50,191	21,511
2010	78,874	55,212	23,662
2011	78,768	55,138	23,630
2012	78,661	55,063	23,598
2013	78,551	54,986	23,565
2014	78,557	54,990	23,567
2015	77,216	54,051	23,165
2016	77,427	54,199	23,228
2017	77,640	54,348	23,292
2018	82,851	57,995	24,855
2019	83,060	58,142	24,918
2020	83,270	58,289	24,981
2021	86,049	60,234	25,815
2022	88,827	62,179	26,648
2023	91,605	64,124	27,482
2024	94,384	66,069	28,315
2025	97,163	68,014	29,149
2026	98,133	68,693	29,440
2027	99,104	69,373	29,731
2028	100,074	70,074	30,000
2029	101,044	71,044	30,000
2030	102,014	72,014	30,000

Source: Calculated.

Total Replenishment Obligation = Total Production – Operating Yield – Annual Overdraft – New Stormwater Recharge

Recycling Replenishment = min[0.3\*Total Replenishment Obligation, 30,000]

MWD Replenishment = Total Replenishment Obligation - Recycling Replenishment

**Table 7: Overdraft and SAR Inflow – Most Rapid Depletion Scenario**

<i>Year</i>	<i>Annual Overdraft</i>	<i>Cumulative Overdraft</i>	<i>SAR Inflow</i>
2006	20,119	20,119	9,900
2007	22,023	42,141	9,900
2008	23,927	66,069	9,900
2009	25,831	91,900	9,900
2010	27,848	119,748	9,900
2011	29,080	148,828	9,900
2012	30,312	179,141	9,900
2013	31,545	210,685	9,900
2014	32,889	243,574	9,900
2015	32,889	276,463	9,900
2016	32,889	309,352	9,900
2017	32,889	342,241	9,900
2018	32,889	375,130	9,900
2019	24,870	400,000	9,900
2020	0	400,000	12,500
2021	0	400,000	12,500
2022	0	400,000	12,500
2023	0	400,000	12,500
2024	0	400,000	12,500
2025	0	400,000	12,500
2026	0	400,000	12,500
2027	0	400,000	12,500
2028	0	400,000	12,500
2029	0	400,000	12,500
2030	0	400,000	12,500

Sources: Annual and Cumulative Overdraft: Assumed; SAR Inflow: Wildermuth Environmental.

**Table 8: Replenishment Obligations and Sources – Most Rapid Depletion Scenario with SAR Inflow Allocated to Desalter Replenishment**

<i>Year</i>	<i>Normal Production Replenishment Obligation</i>	<i>Chino Desalter Replenishment Obligation</i>	<i>MWD Replenishment</i>	<i>Recycling Replenishment</i>
2006	36,487	0	25,541	10,946
2007	41,643	0	29,150	12,493
2008	46,806	0	32,764	14,042
2009	51,970	0	36,379	15,591
2010	57,126	0	39,988	17,138
2011	55,788	0	39,051	16,736
2012	54,448	0	38,114	16,335
2013	53,107	0	37,175	15,932
2014	51,768	0	36,238	15,530
2015	50,427	0	35,299	15,128
2016	50,638	0	35,447	15,191
2017	50,851	0	35,596	15,255
2018	56,062	0	39,243	16,819
2019	56,271	8,019	45,003	19,287
2020	56,482	30,289	60,739	26,031
2021	59,260	30,289	62,684	26,865
2022	62,038	30,289	64,629	27,698
2023	64,816	30,289	66,574	28,532
2024	67,595	30,289	68,519	29,365
2025	70,374	30,289	70,663	30,000
2026	71,344	30,289	71,633	30,000
2027	72,315	30,289	72,604	30,000
2028	73,285	30,289	73,574	30,000
2029	74,255	30,289	74,544	30,000
2030	75,225	30,289	75,514	30,000

Source: Calculated.

Normal Production Replenishment Obligation = Total Production – Desalter Production – Operating Yield – New Stormwater Recharge

Desalter Replenishment Obligation = Desalter Production – Annual Overdraft – SAR Inflow

Recycling Replenishment = min[0.3\*(Normal Production Replenishment Obligation + Desalter Replenishment Obligation), 30,000]

MWD Replenishment = Normal Production Replenishment Obligation + Desalter Replenishment Obligation - Recycling Replenishment

**Table 9: Replenishment Obligations and Sources – Most Rapid Depletion Scenario with SAR Inflow Unallocated**

<i>Year</i>	<i>Total Replenishment Obligation</i>	<i>MWD Replenishment</i>	<i>Recycling Replenishment</i>
2006	46,387	32,471	13,916
2007	51,543	36,080	15,463
2008	56,706	39,694	17,012
2009	61,870	43,309	18,561
2010	67,026	46,918	20,108
2011	65,688	45,981	19,706
2012	64,348	45,044	19,305
2013	63,007	44,105	18,902
2014	61,668	43,168	18,500
2015	60,327	42,229	18,098
2016	60,538	42,377	18,161
2017	60,751	42,526	18,225
2018	65,962	46,173	19,789
2019	74,190	51,933	22,257
2020	99,270	69,489	29,781
2021	102,049	72,049	30,000
2022	104,827	74,827	30,000
2023	107,605	77,605	30,000
2024	110,384	80,384	30,000
2025	113,163	83,163	30,000
2026	114,133	84,133	30,000
2027	115,104	85,104	30,000
2028	116,074	86,074	30,000
2029	117,044	87,044	30,000
2030	118,014	88,014	30,000

Source: Calculated.

Total Replenishment Obligation = Total Production – Operating Yield – Annual Overdraft – New Stormwater Recharge

Recycling Replenishment = min[0.3\*Total Replenishment Obligation, 30,000]

MWD Replenishment = Total Replenishment Obligation - Recycling Replenishment

**Table 10: Prices – High Price Scenario**

<i>Year</i>	<i>Tier 2 Price</i>	<i>Replenishment Price</i>	<i>Recycling Price</i>
2006	427	238	69
2007	427	238	72
2008	459	275	75
2009	473	297	79
2010	486	314	82
2011	497	331	86
2012	519	346	90
2013	543	361	94
2014	567	378	98
2015	593	395	103
2016	619	412	107
2017	647	431	112
2018	676	450	117
2019	707	471	122
2020	739	492	128
2021	772	514	134
2022	807	537	140
2023	843	561	146
2024	881	587	152
2025	920	613	159
2026	962	641	166
2027	1,005	669	174
2028	1,050	700	182
2029	1,098	731	190
2030	1,147	764	198

Source: Metropolitan Water District of Southern California.

**Table 11: Prices – Low Price Scenario**

<i>Year</i>	<i>Tier 2 Price</i>	<i>Replenishment Price</i>	<i>Recycling Price</i>
2006	427	238	69
2007	427	238	71
2008	450	261	73
2009	457	268	75
2010	463	282	78
2011	477	300	80
2012	491	309	82
2013	506	318	85
2014	521	328	87
2015	537	338	90
2016	553	348	93
2017	570	358	96
2018	587	369	98
2019	604	380	101
2020	622	391	104
2021	641	403	107
2022	660	415	111
2023	680	428	114
2024	700	441	117
2025	722	454	121
2026	743	467	125
2027	765	481	128
2028	788	496	132
2029	812	511	136
2030	836	526	140

Source: Metropolitan Water District of Southern California.



**Table 12: Expected Value of Reduced Storage Losses**

<b>Program Size</b>	<i>Losses</i>	<i>Present Value - High Rate</i>	<i>Present Value - Low Rate</i>
300,000	80,175	18,647,350	15,290,827
400,000	106,900	24,863,133	20,387,769
500,000	133,626	31,079,149	25,484,903

Source: Wildermuth Environmental.

# Attachment C

**Report on the Distribution of Benefits to Basin Agencies from the Major Program  
Elements Encompassed by the Peace Agreement and Non-Binding Term Sheet**

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October 17, 2007

**1. Introduction and Summary of Findings**

This report measures the costs and benefits to various Chino Basin agencies of the program elements encompassed by the Peace I and Peace II Agreements. Both agreements are considered relative to a baseline state of the world existing after the Judgment but prior to the Peace Agreement. The analysis examines net returns to the ten largest agencies that hold groundwater rights in the Basin over the time period 2007 to 2030. Together, these agencies account for over 91 percent of Basin safe operating yield.

Overall, the study shows that the two agreements produce substantial net benefits to Chino Basin agencies – over \$904 million in present value terms. The provisions of the Peace II Agreement are especially valuable, as they account for \$723 million (80 percent) of the total net benefit to the Basin agencies studied. Through the attainment of hydraulic control, the program elements in Peace II Agreement include the introduction of large quantities of recycled water in the Basin, which lessens the need to procure other supplies to meet growing demand for water. With respect to the distribution of net benefits across agencies, shown in the summary tables below, the main outcome is that all agencies benefit from the agreements, although the magnitude of the net benefit varies considerably among agencies.

	Total Net Benefit (1000s of 2007\$)		
	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Peace I</i>	<i>Peace II vs. Baseline</i>
City of Chino	\$20,294	\$75,671	\$95,966
City of Chino Hills	\$12,217	\$61,320	\$73,537
City of Ontario	\$42,547	\$189,724	\$232,271
City of Upland	\$9,442	\$34,644	\$44,086
Cucamonga Valley Water District	\$60,667	\$217,462	\$278,128
Fontana Union Water Co.	\$4,839	\$25,429	\$30,268
Monte Vista Water District	\$7,025	\$33,455	\$40,480
San Antonio Water Company	\$1,141	\$5,995	\$7,136
Jurupa CSD	\$15,772	\$19,482	\$35,254
City of Pomona	\$8,189	\$59,348	\$67,537
<b>Total</b>	<b>\$182,133</b>	<b>\$722,530</b>	<b>\$904,663</b>

	Net Benefit per Acre-Foot (2007\$)		
	<i>Peace I vs.</i>	<i>Peace II vs.</i>	<i>Peace II vs.</i>
	<i>Baseline</i>	<i>Peace I</i>	<i>Baseline</i>
City of Chino	\$31.30	\$116.70	\$148.00
City of Chino Hills	\$20.60	\$103.38	\$123.98
City of Ontario	\$24.20	\$107.91	\$132.11
City of Upland	\$17.46	\$64.07	\$81.54
Cucamonga Valley Water District	\$32.92	\$118.01	\$150.93
Monte Vista Water District	\$20.13	\$95.88	\$116.01
Jurupa CSD	\$17.86	\$22.06	\$39.92
City of Pomona	\$11.10	\$80.47	\$91.58
<b>Overall Average</b>	<b>\$19.84</b>	<b>\$78.69</b>	<b>\$98.53</b>

In terms of total net benefit, two agencies, City of Ontario and Cucamonga Valley Water District, receive over half of all the net benefits resulting from the agreements. An important reason these agencies receive a large share of the net benefit from the agreements is due to their relative size: the two agencies combined account for approximately half of the consumer demand for Basin water.<sup>1</sup> Controlling for agency size on the basis of demand for Basin water, the net benefit resulting from the combined program elements in the Peace I and Peace II Agreements shows considerably less variation. The table above indicates that 7 of the 8 agencies with positive demand for Basin water receiving benefits ranging from \$82 to \$151 per acre-foot.<sup>2</sup>

## 2. Conceptual Framework

The model of groundwater value used in this report is standard in the academic literature and builds on the methodology used in the earlier aggregate study of Basin net benefits. The net benefits resulting from access to a groundwater resource are the gains from pumping (the demand for water) less the cost of extraction and conveyance, and a user cost component, which reflects the lost option value entailed by removing a unit of water from storage. The stream of annual net benefits is discounted back to current dollars using a discount factor predicated on the rate of interest, which is taken to be the current risk-free long-term rate of interest and is set at 4.5 percent per year.

Allocation of aggregate costs and benefits to individual agencies in the Basin is accomplished by a complex set of legal rules (e.g., shares of operating yield), cost-sharing arrangements that fund programs for Basin improvements through collective institutions, and market forces. The goal of this study is to measure net benefits to individual agencies under three scenarios: (i) a baseline case defined by the Judgment; (ii) a set of rules to operate the Basin and fund programs through collections as defined by the Peace Agreement; and (iii) an alternative set of rules that are

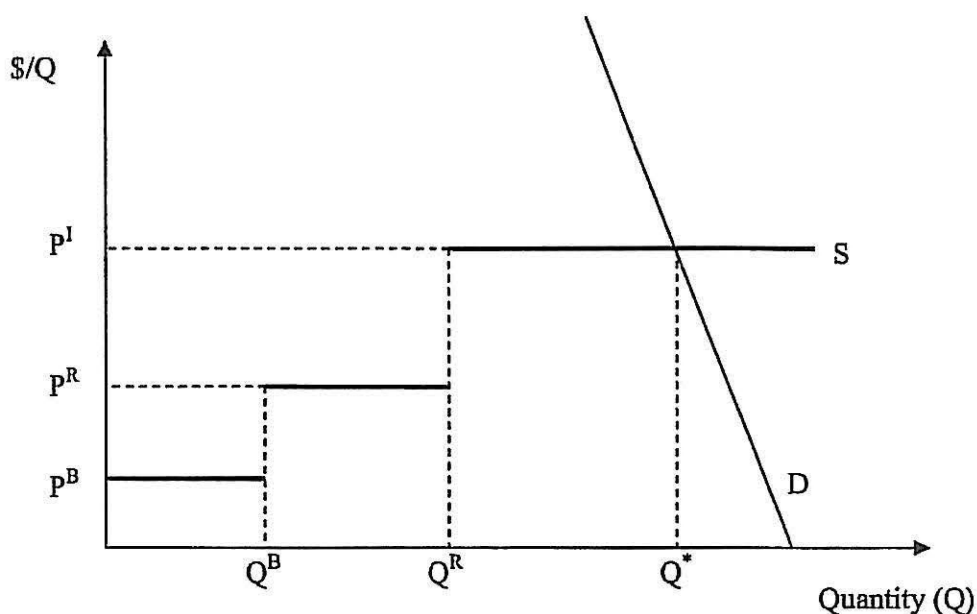
<sup>1</sup> Consumer demand for Basin water, which is met through some combination of Basin supply and water imports, is calculated for each agency as Urban Water Demand less available surface water and other groundwater supplies. Over the 2007-2030 period of study, the City of Ontario and Cucamonga Valley Water District are projected to meet consumer demand of 3.4 million acre-feet out of 6.9 million acre-feet (49 percent) of total consumer demand for Basin water.

<sup>2</sup> Fontana Union Water Company and San Antonio Water Company are not included in these calculations, because the available surface water and other groundwater supplies for these agencies exceed their Urban Water Demand.

designed to achieve hydraulic control and are defined in Peace II Agreement (as represented in the Non-Binding Term Sheet dated May 23, 2006).

To understand the allocation of benefits among individual agencies in the appropriative pool most clearly, consider for the moment the case in which the appropriative pool comprises 100 percent of the Basin water. Figure 1 depicts the aggregate supply (S) and demand (D) schedules for this Basin. Aggregate demand is total water demand in the Basin, and the supply curve is a step function, ordered from the least expensive uses of water to the most expensive uses of water.<sup>3</sup> Many of the effects modeled in this study amount to changes in agencies' cost of meeting water demand. An arrangement or cost-sharing rule that reduces an agency's cost of service provides a net benefit to that agency and its ratepayers.

**Figure 1. Conceptual Model: Aggregate Demand and Supply**



The first step of the supply curve, which represents the least expensive water source, is groundwater pumped directly from the Basin. The extent of groundwater pumping in the Basin is limited by the steady-state ("safe") yield, which is represented in the figure by quantity  $Q^B$ . The cost per unit of Basin water is denoted by the (implicit) price  $P^B$ , which includes lift costs, conveyance costs, and user cost. The second step of the supply curve represents replenishment water. After the safe yield of the Basin is exhausted, additional groundwater pumping can occur provided that replenishment water is purchased to recharge the Basin. The effective capacity of the Basin is the sum of Basin safe yield and Basin recharge capacity, denoted by the quantity  $Q^R$  in the figure. (The recharge capacity of the Basin is given by the difference  $Q^R - Q^B$ .)

<sup>3</sup> In practice, the water supply function has multiple steps, with each step representing the various pumping and conveyance costs of a sequence of wells, and, for this reason, aggregate supply conditions are often approximated by an upwards-sloping, continuous supply function; however, the essential points of the model can be made more clearly by grouping water costs into common categories represented by each of the three steps.

Replenishment water is supplied to the Basin through replenishment water imports at the MWD replenishment rate, which is denoted in the figure by  $P^R$ . The third step in the supply function, the most-expensive source of water, is imported water for direct (consumptive) use. Imported water for direct use is available to agencies in the Basin at a price denoted by  $P^I$ , which reflects the cost of procuring new water supplies from outside the Basin. The cost of developing reliable sources of water outside the Basin may differ across agencies in practice according to the options available to each agency in developing outside water sources. The outside option for each agency in the present study, unless stated otherwise, is taken to have a cost equal to the Tier 2 MWD rate for untreated water.

The equilibrium quantity of water consumed is given by the intersection of supply and demand, which occurs at the quantity  $Q^*$  and the price  $P^I$ . The key to characterizing the distribution of benefits from policies that increase the effective yield from the Basin, either by expanding Basin safe yield or by augmenting Basin recharge capacity, is the understanding that economic values, as captured by prices, are realized on the margin of water use where supply intersects with demand (the third step in the figure). Gains from management of the Basin are created by replacing units of water at the third and most-expensive step of the supply function with less expensive sources of water. Because individual supplies are added together to get aggregate supply, the distribution of market benefits to individual agencies in response to Basin improvements depends on the composition of water use by each agency across each of the steps of supply, in effect where each agency is "located" on the supply schedule. In general, agencies who meet their urban water demand to a greater degree with marginal units of water (i.e., imported water for direct use) acquire a larger share of the benefits from Basin improvements than agencies that are less represented on this "extensive margin" of supply.<sup>4</sup>

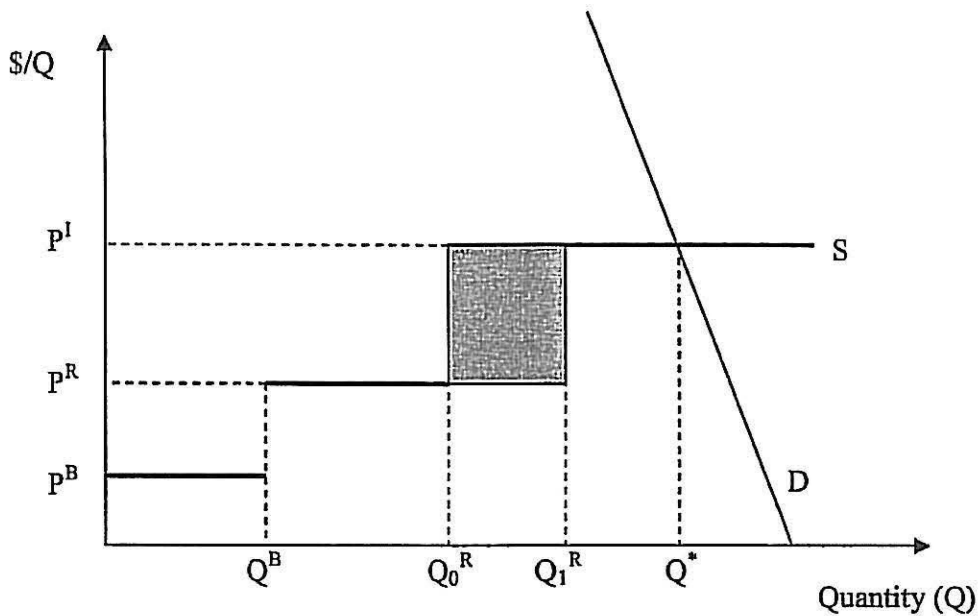
Consider a policy that increases the recharge capacity of the Basin. In general, such an effort has two effects that, taken together, can alter the net benefits received by water agencies: (i) increasing the Basin recharge capacity involves a fixed cost component that must be allocated among agencies according to some cooperative, cost-sharing rule; and (ii) increasing the Basin recharge capacity allows for greater use of replenishment water that can displace expensive Tier 2 water on the margin. The distribution of net benefits in the Basin is altered in cases where the market allocation of benefits from the increased use of replenishment water differs from the allocation of cost among individual agencies.

Figure 2 shows the gain from an increase in recharge capacity in the Basin. The increase in recharge capacity increases the effective yield in the Basin, which is depicted in the figure by the movement from  $Q_0^R$  to  $Q_1^R$ . The increased recharge capacity allows Basin agencies to incur additional replenishment obligations that displace  $Q_1^R - Q_0^R$  units of imported water for direct use. The total producer benefit resulting from the increase in recharge capacity is represented by the shaded region in the figure, which sums the difference between the Tier 2 rate and replenishment rate for each additional unit of water that can be replenished.

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<sup>4</sup> Generally, users disproportionately represented on the margin of supply represent agencies that incurred large increases in urban water demand subsequent to the assignment of safe operating yield and were forced to meet the increase in demand with relatively expensive sources of imported water.

Figure 2. Benefit of an Increase in Basin Recharge Capacity



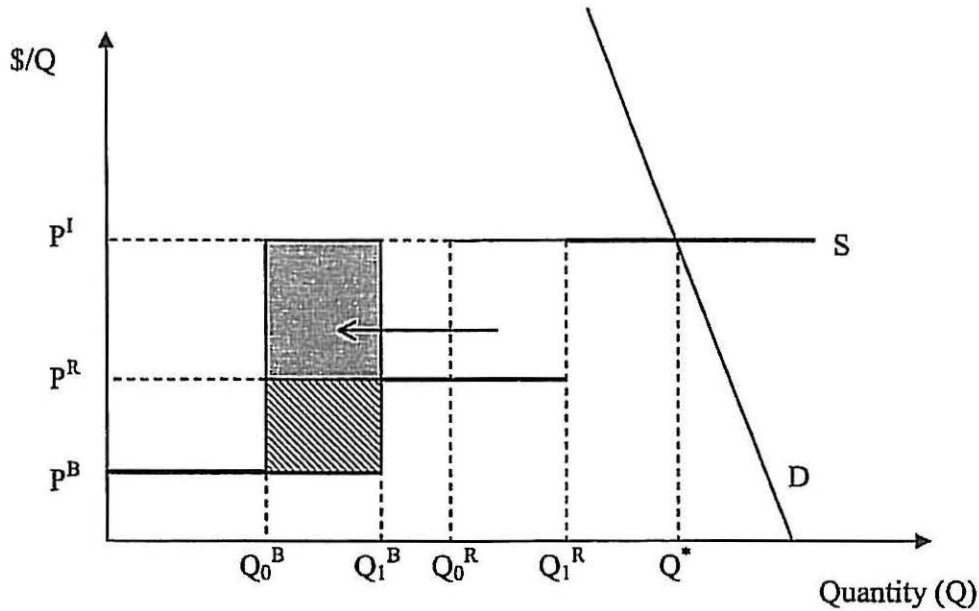
Among individual agencies in the Basin, the benefit of an increase in recharge capacity is distributed exclusively to agencies on the extensive margin of water supply. For this reason, the market return from an increase in recharge capacity can be distributed equally across agencies only in the case where the agencies have equal shares of the third step of water supply in the Basin. To illustrate this point, consider an agency that faces sufficiently small water demand relative to its share of Basin production rights that its urban water demand can be met each year entirely through the use of Basin safe yield. Such an agency would require the use of neither imported replenishment water nor imported water for direct use to meet its urban water demand, and would stand to receive no market benefit from participating in a cooperative policy designed to increase Basin recharge capacity. To the extent that cooperative assessments levied to recoup the cost of increasing Basin recharge capacity are based on relative share of operating yield, as opposed to being levied in proportion to the initial share of imported water deliveries for direct use across agencies, policies that increase Basin recharge capacity alter the distribution of net benefits.

Next, consider the benefit associated with an increase in Basin safe yield. Figure 3 shows the effect of an increase in Basin safe yield from  $Q_0^B$  to  $Q_1^B$  units. The increase in Basin safe yield extends the lowest step of the supply function and displaces  $Q_1^B - Q_0^B$  units of replenishment water purchases. The value of the displaced replenishment water (net of the cost of Basin water) is shown by the cross-hatched region in the figure. The increase in Basin safe yield, in turn, increases the effective yield in the Basin (the sum of Basin yield and recharge capacity) from  $Q_0^R$  to  $Q_1^R$ , which is represented in the figure by a rightward shift in the replenishment step of supply. The increase in Basin safe yield therefore also displaces  $Q_1^R - Q_0^R = Q_1^B - Q_0^B$  units of imported water on the extensive margin of supply, which provides an additional gain represented by the shaded region of the figure. The total market benefit to all agencies is represented by the sum of these two regions. The value of an increase in Basin safe yield is the difference between



the price of imported water for direct use and the procurement cost of Basin groundwater for each unit of additional water made available to Basin agencies.

**Figure 3. Benefit of an Increase in Basin Safe Yield**



The economic value of an increase in safe yield conveys upward into market benefit across both steps of supply. For this reason, policies which lead an increase in Basin safe yield are not only more valuable to agencies in the Basin than an increase in recharge capacity, but the benefits are also distributed more equally. As in the case of an increase in replenishment capacity, the ultimate repository of market value for a one-unit increase in safe yield is a unit of displaced water on the extensive margin of supply; however, this displacement now occurs with Basin safe yield rather than through the use of imported replenishment water. To see how the market benefits of a policy that increases Basin safe yield are distributed to individual agencies, consider again an agency that meets its urban water demand each year entirely through the use of Basin safe yield without the need for replenishment water or imported water for direct use. Unlike the case of an increase in replenishment capacity, the increase in Basin safe yield provides each agency with physical water assets (e.g., according to its share of Basin safe yield) that can be sold to other agencies in the transfer market. The gain to this agency following the increase in Basin safe yield depends on the price it receives in the transfer market, for instance if the transfer price is equal to the replenishment rate ( $P^R$ ) then the agency acquires a share of the benefits in the cross-hatched region of the figure in proportion to its share of Basin safe yield. The remaining benefit of each unit of water provided as the share of safe yield to this agency is acquired by the water purchaser in the transfer market.

In sum, agencies that initially meet their urban water demand with a relatively large share of imported water for direct use receive the largest share of the market benefit from a policy that increases Basin safe yield. These agencies receive the full market value ( $P^I - P^B$ ) for each unit of water displaced through their allocated share of the increase in Basin safe yield. To the extent



that agencies with an initially large share of imported water purchases for direct use participate in the transfer market, these agencies also acquire the difference between the Tier 2 water price and the transfer price for each unit of water purchased from agencies that are under-represented on the extensive margin of supply. If the transfer price of water is taken to be equal to the replenishment rate ( $P^R$ ), then the market benefit represented by the shaded region of Figure 3 is divided among agencies according to their relative share of production on the extensive margin of supply, while the market benefit represented by the cross-hatched region of Figure 3 is divided among agencies according to their relative share of Basin safe yield.<sup>5</sup> Policies that expand Basin safe yield lead to redistributive effects on the net benefits received by individual agencies whenever the allocation of costs in the cooperative arrangement differ from this distribution of benefits provided in the market.

The above framework for calculating the distribution of net benefits from various program elements is applied to the Chino Basin as follows. First, the water yield in the Basin is calibrated to the relevant quantity supplied by the appropriative pool by netting out production by the overlying rights-holders from the Basin safe yield. This is essentially the distinction made in practice between "safe yield" and "safe operating yield" in the Basin. As it pertains to the calculation of net benefits to agencies with appropriative rights, policies that increase the Basin yield (as in Figure 3) now refer both to policies that directly increase Basin safe yield as well as to policies that redistribute the existing safe yield from overlying right-holders to members of the appropriative pool, for instance through net agricultural transfer.

Second, as defined by the framework above, net benefits are calculated for individual agencies according to calculations on the avoided cost of Tier 2 water purchases provided by program elements in the Peace I and Peace II agreements, respectively, relative to the baseline scenario.<sup>6</sup> Considering the change in cost from the introduction of new program elements suppresses the need to explicitly calculate components of cost that are common to the baseline, Peace I, and Peace II scenarios.

Third, the analysis abstracts from seasonal and annual cycles in water availability by considering expected values where possible. Seasonal cycles are smoothed in all scenarios by using annual data on demand and supply conditions facing agencies. Annual cycles are smoothed in all scenarios by treating each year as an average weather occurrence represented by the expectation that each 10-year future horizon in the model is comprised of 7 "wet" years, in which replenishment water is available to agencies in the Basin, and 3 "dry" years, in which replenishment water is not available.<sup>7</sup> Each year in the model thus has the interpretation of representing production decisions that are 30 percent dry and 70 percent wet. By smoothing annual production outcomes into an expected value framework, this implies that a replenishment

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<sup>5</sup> This argument does not rely on the water transfer price being equal to the replenishment rate and applies to any water transfer pricing rule that divides the gains from exchange (defined here by the value  $P^1 - P^B$ ).

<sup>6</sup> An alternative scenario is also considered that denominates the avoided cost of imported water for direct use at the Tier 1 rate, which provides a bracketing condition on the range of outside options available to individual agencies for procuring reliable new sources of water at rates between the Tier 1 and Tier 2 MWD prices.

<sup>7</sup> The expected sequence of wet and dry years is based on the assumption that underlies program element 2 of the OBMP that "replenishment water is available 7 out of 10 years." (Implementation Plan: Optimal Basin Management Plan for the Chino Basin, p13: [http://www.cbwm.org/docs/legaldocs/Implementation\\_Plan.pdf](http://www.cbwm.org/docs/legaldocs/Implementation_Plan.pdf).)

water step exists in the supply function in each year of the study, but that the length of the step is treated as 70 percent of the recharge capacity in the Basin.

Fourth, the net benefit of policies that increase the safe operating yield of the appropriative pool is distributed among individual agencies, in part, through water exchanges between agencies in the transfer market. Water transfers are specified to exchange units of water between agencies that are not adequately represented on the extensive margin of supply to agencies which are more highly represented on this margin. Specifically, the water price in the transfer market is fixed at the prevailing MWD replenishment rate in each period to divide these rents from exchange.

Finally, the net benefit returned to each agency under Peace I and Peace II rules relative to the baseline scenario is computed by coupling the market distribution of benefits, as outlined by the framework here, with the distribution of cost implied by the rules encompassed by each agreement. These rules are defined in the following description of scenarios.

### **3. Common Components**

Several components common to all scenarios frame the overall analysis.

#### *3.1. Agencies Considered*

Because of the detailed calculations required to divide the net benefit created by each scenario among individual agencies in the study, the study encompasses only the ten largest water-holding agencies in the Basin (the cities of Chino, Chino Hills, Ontario, Pomona, and Upland, Fontana Union Water Company, Monte Vista Water District, Cucamonga Valley Water District, Jurupa Community Services District, and San Antonio Water Company). These ten agencies account for 91.2 percent of the Basin-wide safe operating yield.

#### *3.2. Smoothing Across Hydrologic Years*

Because production is smoothed across years, the patterns of local storage and local supplemental storage are also smoothed for each agency. This abstracts from the actual series of puts and takes that rely on temporal adjustments in water storage by accounting for the expected local storage need of individual agencies. (Recall that each year is a representative hydrologic year characterized by expected conditions that are 70 percent wet and 30 percent dry.) A single local storage account is constructed for each agency that combines local storage with local supplemental storage in all scenarios, and the local storage balance of each agency is adjusted each year to reflect the fact that replenishment water is available to meet replenishment obligations only 70 percent of the time.

For this reason, the annual amount held in storage for each agency is  $3/7$  ( $3/7 = 10/7 - 1$ ) of the annual excess demand for water that cannot be met by the agency through the allocation of contemporaneous supply. The expected arrival time of a dry year in which replenishment water is not available is given by the mean of a Poisson process ( $\mu = 10/3$ ), and the average holding time for a unit of water held in storage is half the expected arrival time of a dry year, which implies that the average annual amount of water held in local storage is  $5/7$  ( $5/7 = 3/7 * 10/3 * 1/2$ ) of the annual excess demand for each agency that cannot be met through the allocation of contemporaneous water supply. In each year, the local storage account is reconciled with the storage balance in the previous year by adding the increment in local storage to the excess

demand for water for each agency. Local storage levels increase smoothly over time in the model for most agencies due to the projected increases in urban water demand.

### 3.3. *Water Prices*

Annual water prices and the discount factor that converts annual values into present value are common across all scenarios. The market rates used in 2007 are the current water rates listed by MWD (\$427/AF for Tier 2 water, \$238/AF for replenishment water), and a \$13 surcharge is added to the replenishment rate to reflect the \$251/AF charge currently paid by each agency for replenishment water procured through Watermaster. The price of water transactions in the transfer market is taken in each period to be the price of replenishment water.<sup>8</sup> The MWD rate forecast through 2012 is taken as the mean of the high- and low-rate forecasts provided by MWD over this horizon. Recycled water rates through 2011 are taken from IEUA projections provided in the 2007 IEUA Long-Run Plan of Finance, with a 25 percent non-member surcharge included for recycled water deliveries outside the IEUA service area (Jurupa Community Services District and the City of Pomona). The price of desalter water for urban supply is taken to be the price cap specified in section 7.6d of the Peace Agreement, which is \$375 in 2007. All water rates outside the range of published forecasts are assumed to increase at a rate of 4.5 percent per year. The discount factor is also taken to be 4.5 percent.

### 3.4. *Demand*

Demand for Basin water for each agency is identical across all three scenarios. Agency-level demand for Basin water is calculated from data provided in the relevant 2005 Urban Water Management Plans (UWMP) by taking the projected demand (gross of conservation) compiled by each agency and converting this into a residual (Basin) demand component by netting out available supplies of surface water and other groundwater sources available to each agency.<sup>9</sup> In the case of Pomona, residual demand for Basin water is taken to be net of Puente and Spadra Basin recycled water, which implicitly assumes that this water would be available to Pomona irrespective of whether hydraulic control is attained in Chino Basin. Residual Basin water demand is linearized for each agency to recover values in the intervening years between the 5-year intervals reported in each UWMP. Residual demand for Fontana Union Water Co., which has rights but serves no subscribers, is zero in all scenarios, as is residual demand facing San Antonio Water Co., which has available surface water and other basin groundwater supply in excess of demand. The combined residual demand for the remaining agencies in the Basin is 215,996 AF in 2007 and increases over time with population growth projections to 337,246 AF in 2030. Among agencies with positive demand values, residual demand in 2007 ranges from a low of 12,753 AF for Monte Vista Water District to a high of 49,552 AF for the City of Ontario, and the residual water demand for the City of Ontario and Cucamonga Valley Water District over the entire horizon is about double the residual water demand of Pomona, 2-3 times greater than the City of Chino, City of Chino Hills, and Jurupa Community Services District, and 5-6

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<sup>8</sup> The average water transaction price in the data provided in the Watermaster's 2006-2007 Assessment Packet is \$177, which represents an approximate 30 percent discount below the current replenishment rate of \$251. This observed price discount below the expected transfer price accords with the "wet year" transfer price that would arise in a representative hydrologic year that is 70 percent wet and 30 percent dry when the "dry year" transfer price is \$422, a value bounded by the prevailing Tier 2 price of untreated water of \$427.

<sup>9</sup> for IEUA members, these data are taken from the IEUA Urban Water Management Plan (2005), Table 2-7, and, for Jurupa Community Services District and the City of Pomona, these data are taken from the individual 2005 Urban Water Management Plans (2005) available on each agencies website.

times greater than the residual demand facing the City of Upland and Monte Vista Water District.

### 3.5. *Desalter Production*

Desalter production is treated as equal across all scenarios. Implicitly, this views the level and location of desalter activity to be determined by the requirements outlined by the Judgment.<sup>10</sup> An alternative approach would be to construct a baseline scenario in which agencies provide their own salt removal infrastructure. One difference between this alternative approach and the present one is that, under baseline conditions with individual desalting O&M costs would be roughly the same, whereas the capital costs of building desalter facilities would be larger by the amount of funding that became available in the Basin through grants made possible by the Peace Agreement.

The projected desalter water for urban supply sets a schedule of delivery to three agencies considered in the study (City of Chino, City of Chino Hills, and Jurupa). The desalter water for urban supply rises from 15,230 AF to 38,088 AF over the period 2007-2030 among agencies in the study, with the remaining desalter supply being delivered to the City of Norco and the Santa Ana River Water Company. Each unit of desalter water supply, including deliveries to the City of Norco and the Santa Ana River Water Company, creates a replenishment obligation for producers in the Basin, and this obligation is divided among agencies according to the various rules encompassed by each of the three scenarios considered (as described below).

### 3.6. *Watermaster Assessments*

Although the assessment fees levied by Watermaster differ across the scenarios according to the total cost of the program elements embodied in each scenario, the rules in which assessments are distributed across individual agencies are common to all scenarios. Specifically, appropriative pool assessments are based on each agency's calculated share of actual fiscal year production. Given that total production and the share of production by individual agencies encompasses only a subset of total Basin production (e.g., roughly 87 percent in 2007), this approach slightly over-estimates assessment costs in all scenarios by attributing 100 percent of the program cost to the ten agencies included in the study. Because the assessment costs used under the Peace I and Peace II scenarios include the baseline costs, as well as significant additional program costs, the over-allocation of assessment costs to individual agencies in the study provides a conservative estimate of the total benefit generated under Peace I and Peace II. The different components of the assessment costs were decomposed into program expenses from the 3-year assessment projections provided by Watermaster.<sup>11</sup> All cost components thereafter are assumed to increase at a rate of 4.5 percent.

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<sup>10</sup> Projected desalter production is taken from IEUA's UWMP (2005, Table 3-10 and Table 7-1), and includes the desalter production of Chino I, Chino I expansion, Chino II, and Desalter 3. The overall level of desalter activity, which grows to an ultimate production level of 43,000 AF by year 2025, an amount slightly below the 50,457 AF desalter production level anticipated by 2020 in the OBMP: (Implementation Plan: Optimal Basin Management Plan for the Chino Basin, Table 3, p59: [http://www.cbwm.org/docs/legaldocs/Implementation\\_Plan.pdf](http://www.cbwm.org/docs/legaldocs/Implementation_Plan.pdf).)

<sup>11</sup> Personal correspondence with Watermaster staff (August 7, 2007).



## 4. Baseline Scenario

### 4.1. Basin Supply

In the baseline scenario, available Basin supply for each agency in each year is comprised of the agency's share of: (i) safe operating yield, (ii) projected desalter water for urban supply, and (iii) the net agricultural pool transfer. The safe operating yield is allocated to individual agencies based on the share of safe operating yield in the Basin defined by the Judgment.

The projected desalter water for urban supply is taken for the baseline case (as well as for the remaining scenarios) from projections available in the IEUA UWMP.<sup>12</sup> Desalter water for urban use is treated in the model both as a source of water supply in the Basin and as a replenishment obligation, where the replenishment obligation associated with each unit of desalter water supply is shared by agencies through the allocation of storage losses and replenishment assessments by Watermaster, which are calculated for the baseline case according to each agencies pro rata share of safe operating yield up to the available recharge capacity in the Basin and by in lieu recharge according to each agencies pro rata share of safe operating yield for any obligation above the available recharge capacity.

The net agricultural transfer to each agency in each year is calculated by taking a straight-line projection of land-use conversions between 2006 conditions reported in the 2006-2007 Watermaster Assessment Package, and assumed "full build-out conditions" in 2030 in which all acres in the agricultural pool eligible for conversion are converted.<sup>13</sup> For the baseline scenario, each converter is credited with 1.3 AF of Basin water for each acre converted, and the sum of water allocated to all land-use conversions and agricultural pool production in each year is deducted from the agricultural pool safe yield of 82,800 AF to get the net agricultural pool transfer to the appropriative pool in each year.<sup>14</sup> Among the ten largest members of the appropriative pool considered in the study, the net agricultural transfer increases from 46,265 AF to 71,377 AF over the 2007-2030 period, which accounts for approximately 92 percent of the total water transfer to the appropriative pool in each year.

Under baseline conditions, there is also an issue of timing of the agricultural pool transfer, with no early transfer of agricultural pool water being made to the appropriative pool prior to the Peace Agreement. Under the Judgment, the agricultural pool allocation was defined to be 414,000 AF in every 5 years. This implies a 4-year waiting period for the appropriative pool before any agricultural transfer takes place, followed by a large allocation of the cumulative agricultural pool under-production in year 5, and an annual stream of transfers thereafter based on a rolling horizon comprised of the previous 5 years agricultural pool under-production. In the

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<sup>12</sup> IEUA Urban Water Management Plan (2005), Tables 3-10 and 7-1.

<sup>13</sup> Watermaster, Fiscal Year 2006-2007 Final Assessment Package, Land Use Conversion Summary (p10): <http://www.cbwm.org/docs/financedocs/Assessment%20Package%20FY%202006-2007%20Final.pdf>. Values after the conversion of all agricultural land eligible for conversion are based on Watermaster calculations (personal communication with Watermaster staff, July 12, 2007).

<sup>14</sup> Under baseline conditions, 1.3 AF of water is allocated to the appropriative pool based on share of safe operating yield in the baseline scenario. This value is not parsed out from the net agricultural transfer that occurs each year, because all water transfers between the agricultural pool and the appropriative pool are based on shares of safe operating yield and an amount greater than 1.3 AF per acre is transferred from the agricultural pool to the appropriative pool in each year.

baseline scenario, the agricultural pool transfer is calculated on an annual basis and timing lags in the delivery of water are suppressed. Differences in the actual timing of the water have no implications for the baseline values in the study, because the rate of water price inflation is taken to be equal to the discount rate, so that delays in water delivery have no implications for the present value calculation.

The sum of these components in each year gives Basin supply for each agency. This represents the first step of the supply function depicted in Figure 1.<sup>15</sup> In total, Basin supply among the ten largest agencies considered in the study rises from 116,044 AF to 164,014 AF over the 2007-2030 period, with the increase in supply generated through land use conversions and increased desalter water for urban supply. (This latter source of water supply is matched by an associated increase in the desalter replenishment obligation, as discussed below.)

#### *4.2. Import Demand*

Import demand for each agency in the Basin represents the amount of demand facing each agency that cannot be met with available Basin supplies (including supplies which can be purchased from other Basin agencies in the transfer market). Import demand for each agency, which must be met through some combination of replenishment water purchases and imported water purchases for direct use, is the sum of three components: (i) excess demand for water; (ii) storage account adjustments; and (iii) water transfers.

Excess demand for each agency in the Basin is calculated as residual demand less the available Basin supply. Excess demand for water is negative in each year for Fontana Union Water Co. and San Antonio Water Co., which implies that these agencies are water suppliers in the transfer market. In each year, approximately 70 percent of the excess demand for water in the Basin is derived from Cucamonga Valley Water District and the City of Ontario, which indicates a large water demand for Basin water among these agencies relative to their share of Basin supply.

In practice, the demand for water in dry years is met, in part, by smoothing the additional water supplies available in wet years across time through local storage. As discussed above, the model considers each year to be a representative year (30 percent dry and 70 percent wet), so that the annual amount of water held in local storage by each agency is 5/7 of the annual excess demand that cannot be met with contemporaneous supply. Local storage in the model, which represents the combined total held in local storage and local supplemental storage accounts in a representative year, increases over the period 2007-2030 from 83,706 AF to 141,565 AF among agencies in the study, where the growth in local storage over the period occurs in proportion to the 70 percent increase in excess demand for Basin water as population increases in the region.

Local storage accounts are not constructed for Fontana Union Water Co. and San Antonio Water Co., because these agencies have excess supply of water in each year above what is necessary to meet their urban water demands. In practice, these agencies may hold water in local storage to arbitrage expected differences in transfer prices between wet and dry years, but such arbitrage

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<sup>15</sup> Because desalter water is not a unique source of supply, an accounting adjustment is made later to back out desalter water supplies from Basin supply by creating an off-setting replenishment obligation for each unit of desalter water used for urban supply.

opportunities are suppressed in the model, because variations in annual water availability are smoothed in the model to a basis of a representative hydrologic year.

In each year, a storage account adjustment is made for each agency by adding the incremental growth in local storage from the previous year's value to the excess demand for water. The amount of water held in local storage adjusts upward each year to meet the growth in excess demand, and this need for added storage to smooth increasing volumes of water between wet and dry years is deducted from contemporaneous water supply.

After storage account adjustments are made in each year, individual excess demand and individual excess supply conditions clear each year in the transfer market. Excess supply to be cleared in the transfer market in each year is comprised of sales by Fontana Union Water Co. and San Antonio Water Co., and, to a lesser extent, by Jurupa Community Services District beginning in 2021. Jurupa CSD becomes a net supplier of water in the transfer market due to the relatively large purchases of desalter water for urban supply in the data provided in IEUA's UWMP (2005). Water transfers are allocated from these suppliers to individual agencies with positive demand for transfer water in proportion to each agency's share of excess demand relative to total excess demand for water in the Basin. The total amount of water transacted in the Basin rises from 12,677 AF to 20,401 AF over the 2007-2030 period, and the largest buyers of transfer water in each period are Cucamonga Valley Water District and the City of Ontario.

#### 4.3. *Water Imports*

Water is imported into the Basin to meet the sum of import demand for direct use and desalter replenishment requirements. Imported water is taken as replenishment water in each period up to the limit on recharge capacity in the Basin (i.e., the second step of the water supply relationship in Figure 1), and the residual quantity of imported water that cannot be met with replenishment water is taken as Tier 2 water imports. Under baseline conditions, the recharge capacity of the Basin is taken to be 29,000 AF per year, which represents the available spreading facilities discussed as pre-existing facilities in program element 2 of the OBMP.<sup>16</sup> Given the smoothing of production into the basis of representative hydrologic years, this implies that baseline conditions in the Basin can accommodate 20,300 AF of recharge per year ( $0.7 \times 29,000$  AF). This recharge capacity defines the limit to which imported water in the Basin can be taken at the lower MWD replenishment rate.<sup>17</sup>

Imported replenishment water in the Basin must first be taken to meet the replenishment obligation of the desalters. The desalter replenishment obligation under baseline conditions is desalter production for urban supply less a 2 percent storage loss component deducted from individual local storage accounts.<sup>18</sup> Under baseline conditions, the desalter replenishment obligation (net of the storage loss allocation) begins at 13,556 AF in 2007 and grows to 40,169 AF per year in 2030. In the year 2010, the desalter replenishment obligation rises to 22,604 AF,

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<sup>16</sup> Implementation Plan: Optimal Basin Management Plan for the Chino Basin, p13:  
[http://www.cbwm.org/docs/legaldocs/Implementation\\_Plan.pdf](http://www.cbwm.org/docs/legaldocs/Implementation_Plan.pdf).

<sup>17</sup> The increase in Basin recharge capacity, as described in the Recharge Master Plan (WEI, Black and Veatch 2001: <http://www.cbwm.org/docs/rechdocs/rechmastplanphase2rep/chapters/pdf/>) is a major program element considered in the Peace Agreement, both in terms of benefit and cost.

<sup>18</sup> Personal correspondence with Watermaster staff.

an amount in excess of the 20,300 AF recharge capacity of the Basin in the baseline scenario, and the replenishment obligation remains above the recharge capacity for the remainder of the time horizon. Over the period 2007-2009, the amount of recharge capacity in excess of the desalter replenishment requirement (e.g.,  $20,300 - 13,556 = 6,744$  AF in 2007) is allocated to individual agencies in proportion to each agency's share of imported water demand relative to total imported water demand in the Basin. Over the period 2010-2030, the desalter replenishment obligation exceeds the recharge capacity of the Basin, and the remaining desalter replenishment obligation above 20,300 AF is met through in lieu production by individual agencies in the Basin. In the baseline scenario, the desalter replenishment obligation, both the portion met with replenishment water purchases and the portion taken as in lieu production, is met by individual agencies according to each agency's pro rata share of safe operating yield.<sup>19</sup>

Aggregate supply and demand are cleared each year on the third step of supply by reconciling effective Basin water supply (Basin supply plus Basin recharge) with import demand through purchases of Tier 2 water from MWD. Tier 2 MWD water purchases are allocated to individual agencies based on the share of each agency's imported water demand relative to total imported water demand in the Basin. Under baseline conditions, the total purchases of Tier 2 water among agencies in the Basin rises from 97,766 AF in 2007 to 200,097 AF in 2030, with the combined purchase share of Cucamonga Valley Water District and the City of Ontario—the two largest purchasers of imported water—representing between 62 percent and 73 percent of total Tier 2 water purchases in each year.

#### 4.4. *Water Procurement Costs*

The total cost of water procurement to individual agencies is the sum of five components: (i) Tier 2 water purchases; (ii) transfer water purchases; (iii) desalter water purchases for urban supply; (iv) desalter replenishment costs; and (v) Watermaster general assessments on the appropriative pool. Water procurement costs associated with Basin production also exist, but these costs exist in all scenarios and consequently net out of the comparison of the various program net benefits.

For the purpose of allocating Watermaster assessments, Tier 2 water purchases are assumed to occur outside the framework of the cooperative organization. That is, the actual production level of each agency, as recorded by the Watermaster each fiscal year for the basis of assessments, does not include any production demands that an individual agency meets through Tier 2 purchases acquired from MWD. For this reason, a separate accounting calculation is made for actual production to recover the allocation of Watermaster assessment costs to individual agencies in each period. Actual production for each agency is residual demand for Basin water less Tier 2 water purchases less storage losses and adjustments to the storage account balance.

Watermaster replenishment assessments are levied to recover desalter replenishment costs (for units up to the 20,300 AF recharge capacity of the Basin) through replenishment water purchased from MWD each year. These costs are allocated to individual agencies according to each agencies pro rata share of safe operating yield.

Watermaster general assessments are levied under baseline conditions to cover the cost of administrative costs, exclusive of the OBMP costs and the special project costs that pertain to

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<sup>19</sup> Personal correspondence with Watermaster staff (August 29, 2007).



Peace I and Peace II. In 2007, these costs account for \$816 thousand of the projected \$7.87 million costs to be levied for general assessments under prevailing Peace conditions. Under baseline conditions, moreover, only the appropriative pool share of general assessment costs is paid by the appropriative pool, which amounts to \$624 thousand of the \$816 thousand administrative costs in 2007, with the remaining share of costs paid by the overlying agricultural and non-agricultural pools. The costs attributed to the appropriative pool are allocated across to individual agencies according to each agency's share of actual production relative to total Basin production.

#### 4.5. *Summary of Baseline Outcomes*

Table 1 provides a breakdown of the projected outcome for the eight largest producers under baseline conditions in the year 2015. Total urban water demand for these producers is 293,214 AF in 2015. Total residual demand, which is the difference between urban water demand and the Basin supply available to each agency, is 273,430 AF. Available Basin water supply, the sum of the shares of safe operating yield, net agricultural transfer (inclusive of land-use conversions), and desalter water for urban supply, is 123,554 AF in the year 2015. The total water transfers of 13,089 AF reflect sales by Fontana Union Water Company and San Antonio Water Company to the remaining producers encompassed by the study. The net storage acquisition of 1,022 AF reflects the change in the local storage balance between the year 2014 (106,032 AF) and the year 2015 (107,054 AF). This increment in the water held in local storage, which must be met by in lieu production by agencies, adds to residual demand for water in the Basin, and the difference between this term and the sum of available Basin water supply and water purchases in the transfer market results in a combined import demand among producers of 137,809 AF.

Total desalter production in the year 2015 is 34,122 AF, which exceeds the available recharge capacity of the Basin, so that imported water demand is met entirely with Tier 2 water purchases.<sup>20</sup> Actual production among these eight agencies (123,250 AF) is the difference between residual demand for Basin water, Tier 2 purchases from MWD, in lieu recharge taken to meet the desalter replenishment obligation, storage losses (2% of local storage = 2,141 AF), and the net storage acquisition. Watermaster administrative assessments are in 2015 are \$1.2 million, of which \$957 thousand is paid by agencies in the appropriative pool.

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<sup>20</sup> An additional 3,905 AF of desalter water production is projected for the Santa Ana River Water Company and City of Norco, who are not considered in this study.

**Table 1: Year 2015 Outcome Under the Baseline Scenario**

Component	Appropriator								Total
	Chino	Chino Hills	Ontario	Upland	Cucamonga	Monte Vista	Jurupa	Pomona	
Urban Water Demand	26,200	24,700	66,600	22,500	72,500	14,100	36,350	30,264	293,214
Available Surface Water	0	0	0	5,200	3,000	0	500	0	8,700
Available Other Groundwater	0	0	0	3,800	5,400	0	0	1,884	11,084
<i>Residual Demand</i>	<i>26,200</i>	<i>24,700</i>	<i>66,600</i>	<i>13,500</i>	<i>64,100</i>	<i>14,100</i>	<i>35,850</i>	<i>28,380</i>	<i>273,430</i>
Safe Operating Yield	4,034	2,111	11,374	2,852	3,619	4,824	2,061	11,216	42,092
Net Ag Transfer	8,916	2,398	8,660	1,875	2,980	3,228	12,840	7,371	48,268
Desalter Water Supply	5,000	4,200	5,000	0	0	0	19,922	0	34,122
<i>Available Supply</i>	<i>17,950</i>	<i>8,709</i>	<i>25,033</i>	<i>4,727</i>	<i>6,600</i>	<i>8,052</i>	<i>33,896</i>	<i>18,587</i>	<i>123,554</i>
Net Storage	487	280	717	-122	1,039	108	-1,653	166	1,022
Transfers	758	1,411	3,668	750	5,078	534	26	864	13,089
<i>Import Demand</i>	<i>7,979</i>	<i>14,860</i>	<i>38,616</i>	<i>7,901</i>	<i>53,461</i>	<i>5,622</i>	<i>275</i>	<i>9,095</i>	<i>137,809</i>
Local Storage	5,893	11,422	29,690	6,266	41,072	4,320	1,396	6,995	107,054
Tier 2 Purchases	7,979	14,860	38,616	7,901	53,461	5,622	275	9,095	137,809
Actual Production	17,512	9,328	25,067	4,589	9,889	7,210	33,343	16,312	123,250
Watermaster Assessments	\$97	\$52	\$139	\$26	\$55	\$40	\$185	\$91	\$685

Notes:

1. All figures in acre-feet except Watermaster assessments.
2. Watermaster assessments are expressed in real terms (1,000s of 2007\$.)

## 5. Peace I Scenario

The Peace Agreement introduced various program elements in the Basin that were not present under baseline conditions. The main components of the Peace Agreement considered here that altered net benefits in the Basin are: (i) an increase in Basin recharge capacity from 29,000 AF to 134,000 AF; (ii) a change in the rules for land use conversion; (iii) transfer of agricultural pool assessments to the appropriative pool; (iv) the introduction of a storage and recovery program; (v) an increase in stormwater recovery from 5,000 AF per year to 12,000 AF per year; and (v) the Pomona credit. This section describes the changes that occurred through these program elements to alter net benefits received by individual agencies in relation to the earlier discussion of the baseline outcome detailed above.

### 5.1. Basin Supply

Under the set of Basin programs encompassed by the Peace Agreement, three factors led to changes in available Basin supply: (i) increased stormwater capture; (ii) a change in the water allocation resulting from land use conversions (including “early transfer”); and (iii) the introduction of the Dry Year Yield program for storage and recovery through MWD. The increased stormwater capture is represented by an annual increase in Basin supply by 12,000 AF of “new yield” in exchange for tying up 12,000 AF of recharge capacity.

The net agricultural transfer to each agency under Peace conditions increased the return to each converter from 1.3 AF of Basin water for each acre converted to 2.0 AF of Basin water for each acre converted. An early transfer program of 32,800 AF per year to the appropriative pool was also introduced, which ultimately led to an over-allocation of agricultural pool water to the appropriative pool.<sup>21</sup> The net agricultural pool allocation to individual agencies replicates the Watermaster calculation in each year, given the projected pattern of land use conversion calculated through 2030. The agricultural pool transfer provides a credit of 2.0 AF per acre for all land-use conversions taking place after the signing of the Peace Agreement and credits earlier conversions at the 1.3 AF per acre rate and the early transfer to members of the appropriative pool is based on each agency’s share of safe operating yield. Because the sum of these two components and the projected agricultural pool production level after land-use conversions have been made exceeds the 82,800 AF of available agricultural pool water in every year, each agency is charged a replenishment obligation for the amount of over-allocated agricultural pool water in proportion to each agency’s share of safe operating yield. This is equivalent to deducting the over-allocation of agricultural pool water from the 32,800 AF early transfer after land use conversions take place and dividing this residual amount of water (e.g.,  $32,800 - 4,270 = 28,530$  AF in Fiscal Year 2006-2007) pro rata among members of the appropriative pool.

In total, the net agricultural pool transfer to the appropriative pool is the same under baseline and Peace rules (49,831 AF in 2007 and 76,909 AF in 2030). Among appropriators considered in the

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<sup>21</sup> Watermaster, Fiscal Year 2006-2007 Final Assessment Package, Land Use Conversion Summary (p10): <http://www.cbwm.org/docs/finandocs/Assessment%20Package%20FY%202006-2007%20Final.pdf>. In the Fiscal Year 2006-2007 Final Assessment Package provided by the Watermaster, the amount of over-allocation was 4,270 AF (3,893 AF of which is incurred as a replenishment obligation to agencies encompassed by the study), and the model projects this total to increase through the process of future land use conversions to 5,127 AF in 2030 (4,674 AF of which is incurred as a replenishment obligation to agencies encompassed by the study).

study, which encompass 91.2 percent of safe operating yield but 100 percent of land use conversions, the change in land-use conversion rules under the Peace Agreement provides a slightly larger net agricultural transfer among agencies considered than under baseline conditions (e.g., 71,673 AF after all conversions take place compared to 71,377 AF under baseline rules). The outcome for individual agencies under the Peace rules for net agricultural pool transfer relative to the baseline scenario is discussed later.

The DYY storage and recovery program alters the allocation of Basin water supply by allowing individual agencies to purchase water from MWD in wet years and store it for use in subsequent dry years. The effective rate paid to MWD for DYY water inputs, net of subsidies paid to the participating agencies, is approximately equal to the current replenishment rate,<sup>22</sup> and the annual MWD replenishment rate is used in each period to price DYY water inputs to individual producers. The present analysis considers the value of the currently-approved 150,000 AF storage and recovery program.<sup>23</sup> Although further expansion beyond this level has been discussed, the study does not consider the potential expansion of this program to 500,000 AF nor the possibility for sales of this water to take place outside the Basin. The increase in the DYY program from 100,000 AF to 150,000 AF is assumed to take place immediately in the year 2007. To adjust the implied pattern of puts and takes of a 150,000 AF storage and recovery program to the smooth production horizon of a representative hydrologic year, we assume that water production in the DYY program is limited to 50,000 AF in each dry year. Given a 0.3 probability of a dry year, this implies an average of 15,000 AF of water is made available in the Basin each year through the DYY program. The distribution of the DYY program storage across individual agencies is given by the table of DYY shift obligations provided by IEUA for the current DYY-100 program, and these values are scaled upwards proportionately to 150,000 AF.<sup>24</sup> It is assumed that there is no storage loss for units of water placed in storage.<sup>25</sup> In effect, this implies that participating agencies in the DYY program purchase 15,000 AF of water in a representative hydrologic year at MWD replenishment rates and convert this amount into 15,000 AF of reliable Basin supply through the use of existing recharge facilities.

Among the ten largest agencies considered in the study, Basin supply under Peace conditions rises from 137,416 AF in 2007 to 185,692 AF in 2030. This reflects an approximate increase of 26,000 AF per year relative to baseline conditions (under baseline conditions, Basin supply is 111,486 AF in 2007 and 159,496 AF in 2030), and the source of the additional Basin supply under the Peace Agreement amounts to the roughly 11,000 AF increased stormwater yield (the share of the 12,000 AF “new yield” acquired by the ten largest agencies) plus the 15,000 AF recovery of DYY storage water.

### 5.2. *Import Demand*

Import demand for each agency in the Basin is calculated in the same manner as the baseline case. As noted above, this involves deducting Basin supply from the Basin water demand facing each agency to get excess demand, correcting excess demand to account for the dynamic adjustments that occur in local storage accounts, and then reconciling excess supply and excess

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<sup>22</sup> Personal communication with IEUA staff.

<sup>23</sup> Personal communication with Watermaster staff.

<sup>24</sup> IEUA Urban Water Management Plan (2005), Table 6-5.

<sup>25</sup> Personal correspondence with Watermaster staff.



demand among individual agencies in the Basin through water transactions in the transfer market.

Two major changes occur under Peace in the resulting evaluation of import demand. First, import demand is now lower each year than under baseline conditions by the approximate 26,000 AF of additional Basin supply that is available each year. This ultimately defrays Tier 2 water purchases as the supply-side of the model is built upwards to the third step of supply. Second, the amount of water held in the local storage account of individual agencies decreases, for instance by 17,769 AF in 2007 (83,706 AF in the baseline versus 65,937 AF under Peace.) Much of this difference in local storage balances is the result of participation in the DYY program crowding-out storage activities that would otherwise take place in local storage accounts.

### 5.3. *Water Imports*

As in the baseline case, annual water imports must flow into the Basin to meet the sum of import demand and replenishment requirements, where the Basin replenishment requirements now include 12,000 AF of stormwater recharge and 15,000 AF of replenishment water purchases for the DYY program in addition to the desalter replenishment obligation. Imported replenishment water represents the second step of the water supply relationship in Figure 2, and this step is elongated under Peace by the increase in Basin recharge capacity to 134,000 AF. Given the smoothing of production, this implies that Basin recharge capacity is 93,800 AF per year ( $0.7 \times 134,000$  AF) in a representative hydrologic year. Of this amount, 27,000 AF per year of recharge capacity is now used to accommodate the combined requirements of stormwater recharge and DYY program recharge, and a substantial share of the remaining recharge capacity is used to fulfill the replenishment obligation of the desalters. The desalter replenishment obligation in each year is defined in the same manner as in the baseline scenario to be desalter production less storage losses of 2 percent deducted from the local storage accounts of producers in the Basin.<sup>26</sup>

Under Peace conditions the need for imported Tier 2 water is smaller than under the baseline. Three main effects drive this change: (i) the recharge capacity of the Basin can now accommodate the entire desalter replenishment obligation each year without requiring agencies to engage in in-lieu recharge; (ii) the amount of annual Basin over-production that can be sustained in the Basin is larger by the amount of the increase in recharge capacity; and (iii) the reduction in local storage reduces the allocation of Basin storage losses to the desalter. The first two components produce direct value to agencies on the extensive margin of supply by defraying Tier 2 purchases (as depicted in Figure 2). The third component, the change in the designation of storage losses against the replenishment obligation of the desalters, creates no economic benefit to the Basin and is purely redistributive in its effects, because the change in the designation of storage losses does not alter the physical recharge capacity of the Basin. An individual agency that incurs a one-unit storage loss gives up a unit of water from local storage, and the value of this unit of water is distributed back to other agencies in the form of a credit against the desalter replenishment obligation.

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<sup>26</sup> Peace Agreement, Article 5.2b(xii).

Under Peace conditions, the amount of replenishment water that is purchased from MWD in each representative hydrologic year is 81,800 AF (93,800 AF of recharge capacity less the 12,000 AF stormwater recharge). This 81,800 AF of replenishment water, which is purchased at MWD replenishment rates, is allocated first to meet the 15,000 AF per year replenishment water requirement for DYY participants and to meet the replenishment obligation of the desalter, with the remaining recharge capacity in each year allocated among individual agencies according to each agency's imported water demand relative to total imported water demand in the Basin.

As in the baseline scenario, imported water demand in excess of the recharge capacity of the Basin is cleared each year in the Peace I scenario on the third step of supply through purchases of Tier 2 water from MWD. Tier 2 MWD water purchases, as in the baseline case, are allocated to individual agencies based on the share of each agency's imported water demand relative to total imported water demand in the Basin.

Under peace conditions, the total purchases of Tier 2 water among agencies in the Basin rise from 25,692 AF in 2007 to 127,710 AF in 2030, a decline of approximately 72,000 AF per year relative to the baseline scenario. This decline in Tier 2 water purchases is approximately equal to the increase in recharge capacity under the Peace Agreement and represents a replacement of Tier 2 water purchases with replenishment water purchases at the lower MWD rate in each year. Cucamonga Valley Water District and the City of Ontario, the two largest buyers of imported water in both the baseline and Peace I, receive the largest share of the net benefit of this offset in Tier 2 water, because of their disproportionate representation on the extensive margin of supply.

#### 5.4. *Water Procurement Costs*

The total cost of water procurement to individual agencies is the sum of eight components: (i) Tier 2 water purchases; (ii) transfer water purchases; (iii) desalter water purchases for urban supply; (iv) replenishment water purchases; (v) desalter replenishment costs; (vi) Watermaster general assessments on the appropriative pool; (vii) Watermaster general assessments on the agricultural pool paid by the appropriative pool; and (viii) the Pomona credit. The first three components of water procurement cost are calculated in the same manner as in the baseline case, with the exception that the total quantities of Tier 2 purchases and transactions in the transfer market differ.<sup>27</sup>

Desalter replenishment costs are recovered through Watermaster replenishment assessments in an amount equal to the cost of replenishment water purchased from MWD to meet the replenishment obligation of the desalters each year. As in the baseline case, these costs are allocated to individual agencies according to each agencies pro rata share of safe operating yield.<sup>28</sup>

Replenishment water purchases allocated to individual agencies related to the DYY program are levied back on individual agencies in proportion to their storage claims in the program, as detailed above. Any remaining recharge capacity in excess of the amount needed to fulfill DYY

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<sup>27</sup> Changes in the pattern of Tier 2 water purchases and water transfers that occur across scenarios and over time within each scenario can have equilibrium effects on market prices; however, price changes in these markets are not considered in the scope of the present study.

<sup>28</sup> Personal correspondence with Watermaster staff (August 29, 2007).

contributions and the replenishment obligation of the desalters and DYY is allocated in each year to individual agencies according to each agency's imported water demand relative to total imported water demand in the Basin.

The total costs recovered through Watermaster general assessments for the program elements in the Peace I scenario include OBMP assessments, special project assessments, and recharge debt payments. The additional OBMP and special project assessments in the Peace I scenario amount to a total \$7.05 million out of the \$7.87 million (90 percent) in total Watermaster expenses in 2007, and these additional costs of implementing the program elements in the Peace I scenario rise to \$13.8 million in 2030. As in the baseline scenario, the allocation of all appropriative pool general assessments to individual agencies is made based on each agency's share of safe operating yield in the Basin.

The Peace Agreement negotiated the transfer of all general assessment fees from the agricultural pool to the appropriative pool. The total assessment fees paid by the agricultural pool, which are now assumed by members of the appropriative pool, amount to \$1.1 million in 2007 and decline to \$460 thousand in 2030 due to land use conversions that result in a decline in agricultural water use as a share of total Basin safe yield. In total, the general assessments paid by the appropriative pool inclusive of the transfer of agricultural pool assessments increase ten-fold from \$624 thousand in the baseline scenario to \$6.3 million under Peace conditions in 2007 and the assessment costs in the Peace I scenario remain at least 7 times as large as the costs attributable to baseline conditions in the Basin throughout the production horizon. The agricultural pool share of Watermaster assessment fees is paid by individual agencies in the appropriative pool according to the agency's share of the net agricultural transfer in each year.<sup>29</sup>

Finally, the Pomona credit of \$66,667 per year is paid every year by each agency in proportion to the agency's share of safe operating yield.

##### *5.5. Comparison of Baseline and Peace Agreement Outcomes*

Under the terms of the Peace Agreement, the present value of the net benefit of the program elements for the ten agencies encompassed by the study is \$182 million. The main component associated with this increased net benefit is the displacement of Tier 2 water with new Basin yield and replenishment water. Under baseline conditions, the present value of total Tier 2 water purchases over the 2007-2030 period is \$1.53 billion, whereas, under Peace conditions, the present value of Tier 2 water purchase over the period decreases to \$931 million. This decrease in Tier 2 water under Peace conditions was replaced with replenishment water at the lower MWD rate, and the combined cost of imported water in the Peace I scenario decreased by \$310 million in present value terms (from \$2.06 billion under baseline conditions to \$1.75 billion under Peace conditions). This benefit was acquired at the expense of an increase in the present value of assessment costs from \$16.7 million to \$146 million.

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<sup>29</sup> For details on this calculation and the distribution of general appropriative pool assessments based on pro rata share of safe operating yield, see Watermaster, Fiscal Year 2006-2007 Final Assessment Package, Pool 3 Assessments Summary (p5): <http://www.cbwm.org/docs/finandocs/Assessment%20Package%20FY%202006-2007%20Final.pdf>.

Table 2 provides a breakdown of the projected outcomes under Peace conditions in the year 2015 for the eight largest producers in the study. A comparison of these outcomes with those that emerge under baseline conditions in Table 1 provides a useful profile of the essential differences in Basin performance under each scenario. Residual demand for Basin water is identical in each scenario. This quantity corresponds to the value  $Q^*$  in Figure 1. The safe operating yield of the agencies considered is the same in both cases, as is desalter water for urban supply. The net agricultural pool allocation to the appropriative pool is slightly higher under Peace (48,848 AF relative to 48,268 AF under baseline rules). This is because the agencies considered in the study represent 91 percent of Basin production and nearly 100 percent of the land use conversions, which are credited with a larger water allocation under Peace. Available Basin supply in the Peace I scenario is accordingly higher by the sum of this component and the 15,000 AF of supply available to agencies through the DYY program, which leads to a commensurate reduction in imported water demand.

The level of local storage is lower under Peace by approximately the 15,000 AF of storage that is now accounted for in the DYY program. Replenishment purchases are now possible due to the increase in Basin recharge capacity, and the agencies combine to purchase 31,533 AF of replenishment water in the year 2015.

In total, Tier 2 water use falls from 137,809 AF under baseline conditions (inclusive of the purchases required by in lieu recharge) to 82,658 AF under Peace conditions. This decrease in Tier 2 water imports reflects the displacement of Tier 2 water purchases through a combination of new Basin yield and increased replenishment water purchases made possible by the expansion of Basin recharge capacity.

Actual production among these eight agencies is higher in the Peace I scenario by 36,953 AF in the year 2015 (160,203 AF vs. 123,250 AF in the baseline scenario). This increment in Basin production represents the effective increase in Basin recharge capacity available to these producers after accounting for the combined 27,000 AF of recharge capacity utilized by stormwater and DYY program recharge.



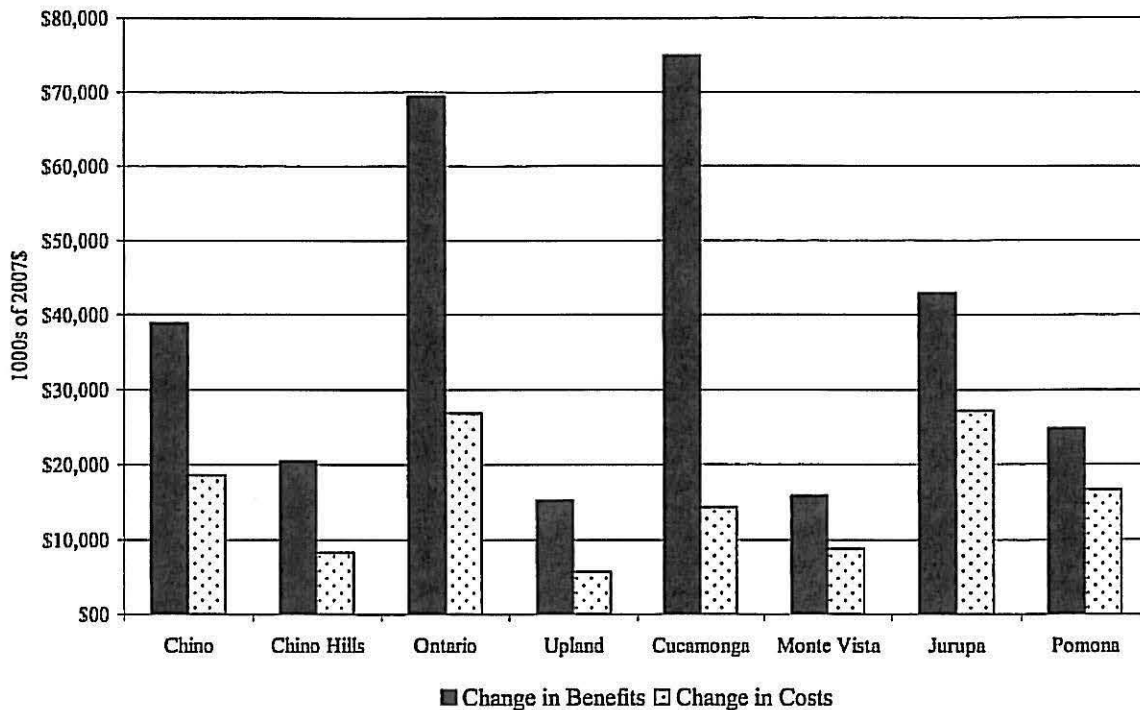
**Table 2: Year 2015 Outcome Under Peace I Scenario**

Component	Appropriator								Total
	Chino	Chino Hills	Ontario	Upland	Cucamonga	Monte Vista	Jurupa	Pomona	
Urban Water Demand	26,200	24,700	66,600	22,500	72,500	14,100	36,350	30,264	<b>293,214</b>
Available Surface Water	0	0	0	5,200	3,000	0	500	0	<b>8,700</b>
Available Other Groundwater	0	0	0	3,800	5,400	0	0	1,884	<b>11,084</b>
<i>Residual Demand</i>	<i>26,200</i>	<i>24,700</i>	<i>66,600</i>	<i>13,500</i>	<i>64,100</i>	<i>14,100</i>	<i>35,850</i>	<i>28,380</i>	<b>273,430</b>
Safe Operating Yield	4,034	2,111	11,374	2,852	3,619	4,824	2,061	11,216	<b>42,092</b>
New Yield	883	462	2,489	624	792	2,455	451	2,489	<b>10,645</b>
Net Ag Transfer	10,558	2,173	7,210	1,467	2,460	2,553	16,658	5,769	<b>48,848</b>
Desalter Water Supply	5,000	4,200	5,000	0	0	0	19,922	0	<b>34,122</b>
Storage & Recovery	527	658	3,671	1,364	5,160	1,801	909	909	<b>15,000</b>
<i>Available Supply</i>	<i>21,001</i>	<i>9,604</i>	<i>29,744</i>	<i>6,308</i>	<i>12,032</i>	<i>10,234</i>	<i>39,074</i>	<i>20,349</i>	<b>148,346</b>
Net Storage	428	288	771	-107	1,058	133	0	225	<b>2,797</b>
Transfers	726	1,985	4,854	914	6,854	516	-3,224	1,065	<b>13,690</b>
<i>Import Demand</i>	<i>4,901</i>	<i>13,399</i>	<i>32,773</i>	<i>6,171</i>	<i>46,272</i>	<i>3,483</i>	<i>0</i>	<i>7,192</i>	<b>114,191</b>
Local Storage	3,713	10,783	26,326	5,137	37,191	2,761	0	5,737	<b>91,649</b>
Replenishment Purchases	1,353	3,700	9,050	1,704	12,778	962	0	1,986	<b>31,533</b>
Tier 2 Purchases	3,548	9,699	23,723	4,467	33,494	2,521	0	5,206	<b>82,658</b>
Actual Production	21,653	11,373	34,071	7,119	18,142	10,695	35,850	21,299	<b>160,203</b>
Watermaster Assessments	\$849	\$401	\$1,258	\$267	\$629	\$411	\$1,353	\$795	<b>\$5,963</b>

Figure 1 compares the benefit received by each agency from reduced water procurement costs to the increase in assessment cost that result from the implementation of the program elements in the Peace I scenario. The assessment costs associated with implementing the program elements considered in the Peace I scenario are represented by an overall increase from \$16.7 million to \$146 million in present value terms. The program benefits in present value terms in the Peace II scenario are reflected in the decrease in water procurement costs from \$2.1 billion under baseline conditions to \$1.8 billion in the Peace I scenario.

In terms of the total benefit, two agencies, City of Ontario and Cucamonga Valley Water District, receive the largest share of the benefits resulting from the Peace I program elements, while the assessment costs are distributed more equally among producers. In total, the City of Ontario and Cucamonga Valley Water District together receive 46 percent of the benefit of decreased water procurement costs and incur 32 percent of the increase in assessment costs. An important reason these agencies receive a large share of the net benefit from the agreements is due to a scale effect in the annual level of residual demand for Basin water, for instance in 2015 these two agencies combined account for 48 percent of residual demand for Basin water (130,700 AF out of 273,430 AF).

**Baseline vs. Peace I Benefit-Cost Comparison**



**Figure 1**

### Distribution of Net Benefit, Peace I vs. Baseline (\$/per AF)

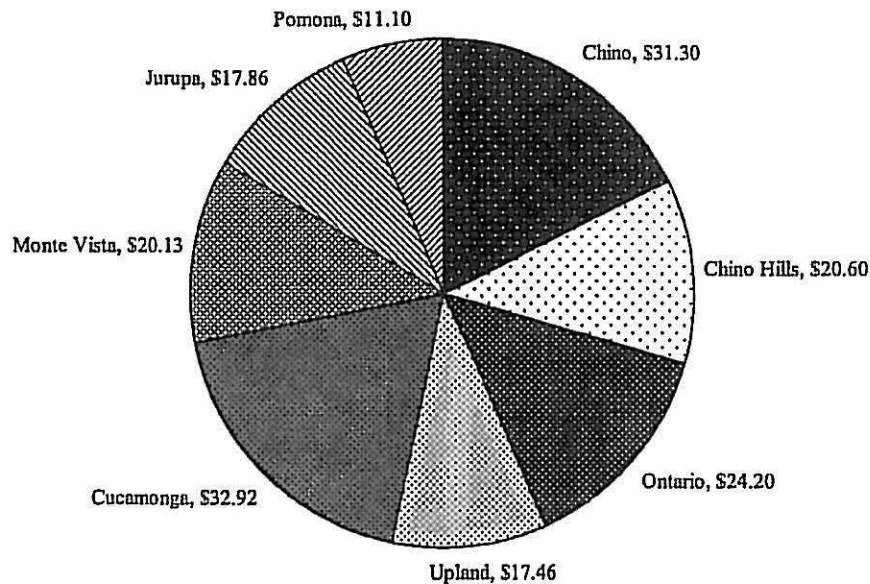


Figure 2

Figure 2 shows the distribution of net benefits per acre-foot of residual water demand across individual agencies in the Basin resulting from the program elements in the Peace I scenario. Fontana Union Water Company and San Antonio Water Company are not included in these calculations, because the available surface water and other groundwater supplies for these agencies exceed their total demand. Controlling for agency scale on the basis of residual demand for Basin water among the remaining producers, the net benefit resulting from the combined program elements in the Peace II Agreement is grouped between \$11.10/AF for the City of Pomona to \$32.92/AF for Cucamonga Valley Water District. Overall, the present value of the net benefit to all parties over the 24 year horizon resulting from a move from baseline conditions to Peace conditions is \$182 million and the total residual demand for water over this period is 6.9 million AF, which implies an average return of \$19.84 per acre-foot to the agencies encompassed by the study.

#### 6. Peace II Scenario

The Peace II scenario introduces several major program elements in the Basin that build on the existing conditions under Peace. The main components of the Peace II scenario that alter market values in the Basin relative to the Peace I scenario are: (i) hydraulic control, which provides 400,000 AF of cumulative forgiveness and SAR inflow of 9,900 AF per year in the Basin; (ii)

the production of recycled water; (iii) a change in the allocation of the replenishment obligation associated with over-production in the agricultural pool transfer; (iv) a transfer of overlying non-agricultural pool water to the appropriative pool; and (v) a transfer of the Pomona credit from Basin agency to Three Valleys. This section describes the changes that occurred through these program elements to alter net benefits received by individual agencies in relation to the earlier discussion of the existing program elements in Peace Agreement.

### *6.1. Basin Supply*

Under the set of programs encompassed by the Peace II Agreement, five factors led to changes in available Basin supply relative to prevailing conditions under Peace: (i) a change in the water allocation resulting from land use conversions; (ii) the influx of recycled water (for direct use and groundwater recharge), (iii) the transfer of 49,178 AF of overlying non-agricultural water to the appropriative pool; (iv) 9,900 AF per year of inflow from the Santa Ana River (SAR), eventually rising to 12,500 AF per year; and (v) 400,000 AF of cumulative forgiveness for Basin over-production. Unlike the program elements implemented in the Peace I scenario, all elements of the Peace II scenario (with the exception of the transfer of the Pomona credit to Three Valleys) fundamentally alter supply conditions on the lowest step of the supply relationship by contributing new sources of Basin yield.

The net agricultural transfer to each agency in the Peace II scenario maintains the return to each converter of 2.0 AF of Basin water for each acre converted and the early transfer of 32,800 AF per year to the appropriative pool, but alters the allocation rule for the replenishment obligation for the amount of over-allocated agricultural pool water. Under Peace II rules, the replenishment obligation for over-allocated agricultural pool water is made on the basis of a weighted average of the share of safe operating yield and share of cumulative land-use conversions for each agency (the “proportion of water available for reallocation (PAR)”) rather than in proportion to each agency’s share of safe operating yield in the Peace I scenario. By placing greater weight on land use conversions, a greater share of the replenishment obligation for over-allocated agricultural pool water is placed on land-use converters. For instance, the combined share of safe operating yield of the two largest land-use converters in the Basin—City of Chino and Jurupa Community Services District—is approximately 10 percent, whereas the combined PAR share of these agencies in Fiscal Year 2006-2007 is 38 percent.<sup>30</sup>

The use of significant quantities of recycled water is made possible in the Basin by the attainment of hydraulic control.<sup>31</sup> Recycled water projections for direct use in the Basin increase from 11,924 AF in 2007 to 60,450 AF in 2030 and recycled water use for groundwater recharge rises over the period from 3,443 AF to 35,000 AF.<sup>32, 33</sup> The recycled water price charged by

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<sup>30</sup> Watermaster, Fiscal Year 2006-2007 Final Assessment Package, Land Use Conversion Summary (p10): <http://www.cbwm.org/docs/finandocs/Assessment%20Package%20FY%202006-2007%20Final.pdf>.

<sup>31</sup> Personal correspondence with IEUA staff.

<sup>32</sup> Projections on recycled water deliveries for direct use and on total recycled water for groundwater recharge is provided for IEUA members in IEUA Urban Water Management Plan (2005), Table 3-13. The projections on recycled water deliveries for direct use to non-IEUA members as well as the distribution of recycled water deliveries for groundwater recharge across individual agencies are based on personal communication with IEUA staff (July 11, 2007).

<sup>33</sup> In no case does the amount of recycled water used for recharge exceed the DHS-approved dilution rates.

IEUA for recycled water deliveries in each period is viewed as sufficient to recover the fully amortized capital and operating costs of their recycled water operations.<sup>34</sup>

The amount of transfer of overlying non-agricultural water to the appropriate pool is taken to be 49,178 AF, which is the ending total balance in the pool 2 local storage account in the Watermaster final assessment package for fiscal year 2006-2007.<sup>35</sup> This amount of water is allocated proportionally in four equal installments over the four-year period 2007-2010 to agencies in the appropriate pool according to their share of safe operating yield, and the price in each period is set at 92 percent of the prevailing MWD replenishment rate.<sup>36</sup>

Finally, in meeting the goal of hydraulic control in the Peace II scenario, two sources of water are created: (i) the Santa Ana River (SAR) inflow is calculated to generate 9,900 AF of new Basin yield each year, eventually rising to 12,500 AF per year; and (ii) 400,000 AF of cumulative overdraft is necessary in the Basin over the period 2007-2030.<sup>37</sup> Both the 9,900 AF per year of SAR inflow and the allocation of the 400,000 AF of cumulative forgiveness are allocated to meet the replenishment obligation of the desalters. The dynamic path of forgiveness for the desalter obligation follows the most-rapid depletion path defined by the aggregate study, which assumes that the Basin overdraft occurs to whatever extent is necessary to meet the replenishment obligation of the desalters (net of storage losses and SAR inflow). Under the most-rapid depletion path, hydraulic control is achieved on the cumulative overdraft of 400,000 AF from the Basin in the year 2024, which raises the SAR inflow from 9,900 AF to 12,500 AF over the remaining period 2025-2030.

## 6.2. *Import Demand*

The demand for imported water for each agency in the Basin is calculated in the same manner as in the Peace scenario. In terms of the resulting values, the influx of new Basin water supply in response to recycled water use alter the resulting evaluation of import demand relative to the prevailing conditions under Peace in two significant ways. First, import demand is now lower each year relative to the outcome under Peace conditions by the amount of new Basin supply. This water ultimately defrays Tier 2 water purchases as the supply side of the model is built upwards and aggregated across each step towards the extensive margin of supply. As these supplies are developed, available supply in the Basin rises to 266,134 AF by the year 2030, an increase of 80,442 AF above the Peace I scenario and 106,678 AF above the baseline conditions.

Second, the amount of water held in local storage by individual agencies decreases to account for the effect of these new, reliable water sources in the Basin and the corresponding reduction in the need to smooth out the cyclical components of water supplies with puts and takes. As recycled water supplies are developed in the Basin, the need for local storage decreases; for instance, the total amount of water held in local storage in the Basin in 2030 decreases from 141,565 AF under baseline conditions, to 129,259 AF in the Peace I scenario, to 80,500 AF in the Peace II scenario.

<sup>34</sup> IEUA, Operating and Capital Program Budget, Fiscal Year 2007/08, Volume 1 (July 2007), p231.

<sup>35</sup> Watermaster, Fiscal Year 2006-2007 Final Assessment Package, Pool 2 Water/Storage Transactions (p12): <http://www.cbwm.org/docs/financdocs/Assessment%20Package%20FY%202006-2007%20Final.pdf>.

<sup>36</sup> Non-Binding Term Sheet, item IX.C.

<sup>37</sup> Personal correspondence with staff at Wildermuth Environmental.



The quantity of water transactions in the water transfer market rises significantly as the number of agencies selling water increases with the influx of recycled water supplies. This changes the distribution of net benefits, both directly by the allocation of recycled water supplies based on proximity of users (rather than according to the share of safe operating yield) and indirectly by reducing the number of agencies that procure water on the extensive margin of supply.

### 6.3. *Water Imports*

An important outcome in the Peace II scenario as a result of hydraulic control is the decrease in Tier 2 water purchases relative to both the baseline and Peace I scenarios. Unlike the case of the Peace I scenario, in which the decline in Tier 2 purchases was largely offset by an increase in assessment costs to support the increase in recharge capacity, the avoided Tier 2 water purchases in the Peace II scenario are associated either with negligible costs (SAR inflow and forgiveness for Basin over-draft) or with the relatively low cost associated with recycled water, which is valued at IEUA recycled water rates. These differences are characterized in the discussion below.

In addition, the level of water imports increases slightly in the Peace II scenario, because of a reduction in the storage loss component allocated to meet the desalter replenishment obligation. In the Peace II scenario, the desalter replenishment obligation is taken to be desalter production less storage losses of 1 percent from the local storage accounts of producers in the Basin.<sup>38</sup>

### 6.4. *Water Procurement Costs*

All program costs that form the basis for Watermaster assessments in the Peace I scenario (as described above) are considered in the Peace II scenario, with the exception of the Pomona credit, which is no longer paid by appropriators in the Basin and is instead paid by Three Valleys Municipal Water District.<sup>39</sup> The removal of this fee from Watermaster assessments leads to an increase in net benefit to agencies in the Basin by \$66,667, and this is returned to agencies in proportion to each agency's share of safe operating yield. The increase in net benefit is offset by a proportional increase in cost for Three Valleys Municipal Water District, and the present value of this stream of payments over the period 2007-2030 at the prevailing rate of discount (4.5 percent) is \$1.0 million.

Recycled water costs are allocated to each agency using the recycled water prices provided by IEUA, as discussed above. The desalter replenishment obligation, which begins in the year 2024 after the 400,000 AF of over-draft credits are exhausted, is met in the Peace II scenario through Watermaster replenishment assessments as follows. Half of the desalter replenishment obligation is met by individual agencies according to pro rata shares of safe operating yield, as in the Peace I scenario, and the remaining half of the desalter replenishment obligation is met according to each agency's share of actual production relative to total production in the Basin.<sup>40</sup> This latter portion of the Watermaster replenishment assessments accords with the method of allocating Watermaster general assessments to the appropriative pool in all three scenarios considered. The

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<sup>38</sup> Non-Binding Term Sheet, Item VI.B.1.

<sup>39</sup> Non-Binding Term Sheet, item VII.A.

<sup>40</sup> Personal correspondence with Watermaster staff (August 29, 2007).

method for calculating the remaining water procurement costs for each agency is identical to the method described above for the Peace I scenario.

#### 6.5. *Comparison of Baseline, Peace I, and Peace II Outcomes*

Relative to baseline conditions, the present value of total net benefit among the ten agencies encompassed by the study for the program elements contained in the Peace II scenario is \$904.6 million, which represents an additional net benefits of \$722.5 million relative to the outcome of the Peace I scenario.

The main factor associated with this increased net benefit is the displacement of Tier 2 water with recycled water, SAR in-flow, and, in the period 2007-2024, with forgiveness for 400,000 AF of Basin over-draft to attain hydraulic control. Under peace I conditions, the present value of total Tier 2 water purchases over the period 2007-2030 is \$931 million, whereas, in the Peace II scenario, the present value of Tier 2 water purchases over the period is \$271 million. This decrease in Tier 2 water costs in the Peace II scenario was replaced with a combination of 400,000 AF of forgiveness for Basin over-draft and recycled water at the lower IEUA recycled water rate.<sup>41</sup> The combined present value of cost of imported water and recycled water inputs in the Peace II scenario is \$1.0 billion, which represents a substantial reduction in the present value of water procurement cost from \$1.75 billion in the Peace I scenario.

Table 3 depicts the projected outcomes to individual agencies in the Peace II scenario for the year 2015. A comparison of these outcomes with those that emerge in the baseline scenario in Table 1 and the Peace I scenario in Table 2 provides a useful profile of the essential differences in Basin performance under Peace II conditions. Residual demand, which corresponds to the value  $Q^*$  in Figure 1, is identical in all three scenarios, as is the safe operating yield of the agencies and desalter production. The net agricultural pool transfer to the appropriative pool (48,530 AF) is between the values that emerge in the Peace I scenario (48,848 AF) and the baseline scenario (48,268 AF). Relative to the outcome under Peace I conditions, the new rules for assessing replenishment obligations for the over-allocated agricultural pool water redistribute the net returns away from the major land-use converters in the Basin (in particular, the City of Chino and Jurupa Community Services District).

Available Basin supply in the Peace II scenario in the year 2015 (208,199 AF) is considerably higher than the available Basin supply in the baseline scenario (123,554 AF) and Peace I scenario (148,346 AF), which leads to a commensurate reduction in imported water demand. Virtually the entire difference in imported water demand between the Peace I scenario and the Peace II scenario is the result of the 60,171 AF addition of recycled water (direct use plus groundwater replenishment).

The level of local storage in the Peace II scenario in, 53,293 AF, is lower than local storage levels in the baseline (107,054 AF) and Peace I scenarios (91,649 AF) due to the large influx of

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<sup>41</sup> The allocation of the 400,000 AF of forgiveness to meet the replenishment obligations of the desalters is implicitly valued at the Tier 2 rate, because each unit of forgiveness that is credited against the desalter replenishment obligation, which is valued directly in the model at the replenishment rate, "frees up" a unit of recharge capacity that allows a unit of Tier 2 water to be displaced on the extensive margin of supply.

reliable Basin water through the development of the recycling program and the acquisition of SAR inflow. This greater availability of Basin water supply also facilitates a richer pattern of water transfers in the Peace II scenario.

In total, Tier 2 water purchases in the year 2015 are 10,186 AF, which represents a substantial reduction from the 137,089 AF of Tier 2 water purchases that take place under baseline conditions (inclusive of the purchases required by in lieu recharge) and the 82,658 AF under Peace I conditions. Replenishment water purchases increase in the Peace II scenario from 31,533 AF in the Peace I scenario to 41,800 AF in the Peace II scenario. The increase in replenishment imports reflects the replacement of 35,267 AF of replenishment obligations in the Peace I scenario with SAR inflow and desalter forgiveness in the year 2015, less the 20,671 AF claim on recharge facilities associated with the groundwater recharge component of the recycled water program in the Peace II scenario. The decrease in Tier 2 water imports of 72,430 AF between the Peace I and Peace II scenario is the result of the displacement of Tier 2 water purchases with a combination of recycled water, SAR in-flow, and allowed over-draft.

Actual production among these eight agencies in the year 2015 (182,170 AF) is higher in the Peace II scenario than in the Peace I scenario (160,203 AF) and the baseline scenario (121,138 AF). This increment in Basin production relative to the Peace I scenario represents the increase in Basin supply resulting from the use of recycled water for groundwater recharge as well as small adjustments in storage loss and net storage requirements.<sup>42</sup>

Finally, notice in the comparison of Tier 2 purchases by individual agencies in Tables 1-3 that the distribution of Tier 2 water purchases across individual agencies in the Basin differs in all three scenarios relative to the distributions of safe operating yield and the distribution of actual production. These elements together comprise the basis for the allocation of collective Basin net benefits to individual agencies, with the division of market benefits from Basin improvement activities determined by each agency's share of Tier 2 water purchases, and the allocation of cost determined through Watermaster formulas that are based either on a individual agency's share of actual production to total Basin production or on a individual agency's share of safe operating yield. Differences in the distributions of these three key values across individual agencies in the Basin are responsible for inequalities in the distribution the net benefit from the various program elements that improve the management of Chino Basin water resources.

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<sup>42</sup> Recycled water for direct use offsets urban water demand, but does not otherwise influence Basin production.



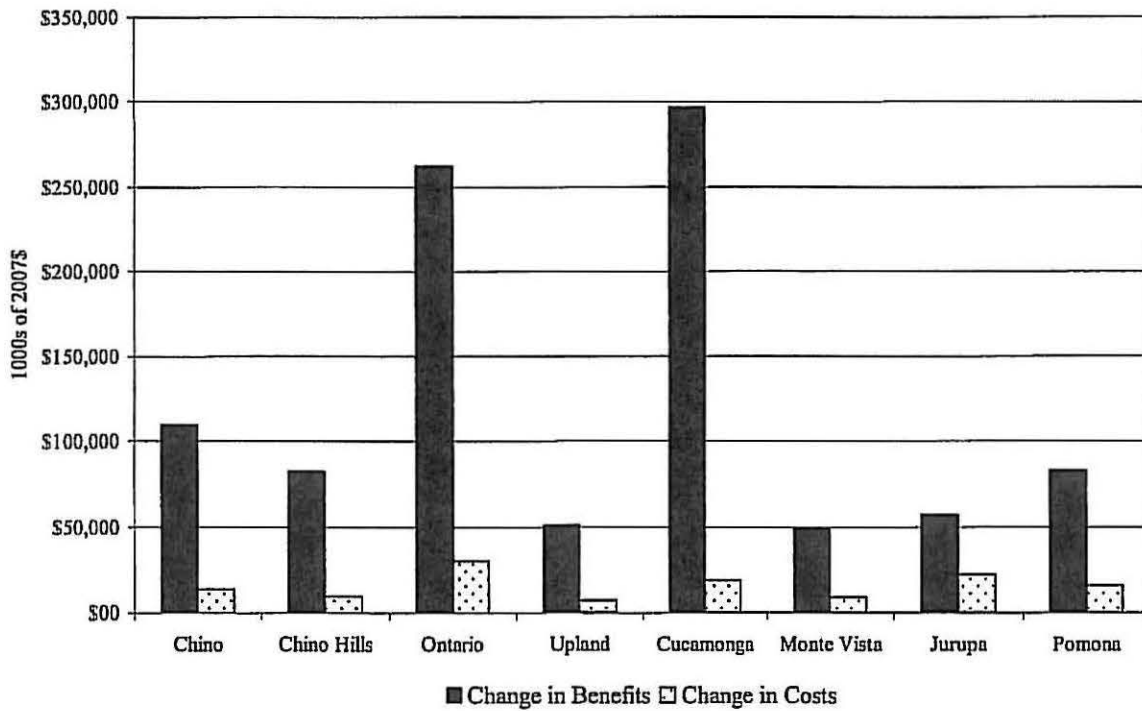
**Table 3: Year 2015 Outcome Under Peace II Scenario**

Component	Appropriator								Total
	Chino	Chino Hills	Ontario	Upland	Cucamonga	Monte Vista	Jurupa	Pomona	
Urban Water Demand	26,200	24,700	66,600	22,500	72,500	14,100	36,350	30,264	293,214
Available Surface Water	0	0	0	5,200	3,000	0	500	0	8,700
Available Other Groundwater	0	0	0	3,800	5,400	0	0	1,884	11,084
<i>Residual Demand</i>	<i>26,200</i>	<i>24,700</i>	<i>66,600</i>	<i>13,500</i>	<i>64,100</i>	<i>14,100</i>	<i>35,850</i>	<i>28,380</i>	<i>273,430</i>
Safe Operating Yield	4,034	2,111	11,374	2,852	3,619	4,824	2,061	11,216	42,092
New Yield	883	462	2,489	624	792	2,455	451	2,489	10,645
Net Ag Transfer	10,103	2,176	7,559	1,581	2,560	2,739	15,599	6,215	48,530
Desalter Water Supply	5,000	4,200	5,000	0	0	0	19,922	0	34,122
Storage & Recovery	527	658	3,671	1,364	5,160	1,801	909	909	15,000
Recycled Water, Direct Use	6,300	4,000	8,800	0	15,900	500	2,500	1,500	39,500
Recycled Water, Replenishment	2,402	2,188	5,590	2,450	5,304	1,070	1,667	0	20,671
<i>Available Supply</i>	<i>29,248</i>	<i>15,796</i>	<i>44,482</i>	<i>8,871</i>	<i>33,336</i>	<i>11,990</i>	<i>42,181</i>	<i>22,294</i>	<i>208,199</i>
Net Storage	0	69	527	-153	5	94	0	217	759
Transfers	-3,048	2,784	7,026	1,389	9,546	684	-6,331	1,955	14,004
<i>Import Demand</i>	<i>0</i>	<i>6,190</i>	<i>15,619</i>	<i>3,087</i>	<i>21,223</i>	<i>1,520</i>	<i>0</i>	<i>4,347</i>	<i>51,986</i>
Local Storage	0	6,360	15,798	3,306	21,974	1,507	0	4,347	53,293
Replenishment Purchases	0	4,977	12,559	2,482	17,064	1,222	0	3,495	41,800
Tier 2 Purchases	0	1,213	3,060	605	4,158	298	0	852	10,186
Actual Production	19,900	14,516	42,550	10,227	26,762	12,159	33,350	22,706	182,170
Watermaster Assessments	\$707	\$447	\$1,368	\$327	\$804	\$411	\$1,129	\$753	\$5,946

Figure 3 compares the benefit received by each agency from reduced water procurement costs to the increase in assessment cost that result from the implementation of the program elements in the Peace II scenario. The program costs in the Peace II scenario do not differ substantively from program costs in the Peace I scenario, and represent an overall increase from \$17 million to \$143.2 million in present value terms. The program benefits in present value terms in the Peace II scenario are reflected in the decrease in water procurement costs from \$2.1 billion under baseline conditions to \$1.1 billion in the Peace II scenario.

City of Ontario and Cucamonga Valley Water District receive the largest share of the benefits resulting from the Peace II program elements, while the assessment costs resulting from the Peace II program elements are notably smaller and distributed more equally across the agencies. In total, the City of Ontario and Cucamonga Valley Water District together receive 56 percent of the benefit of decreased water procurement costs and incur 39 percent of the increase in assessment costs.

**Baseline vs. Peace II Benefit-Cost Comparison**



**Figure 3**

### Distribution of Net Benefit, Peace II vs. Baseline (\$/per AF)

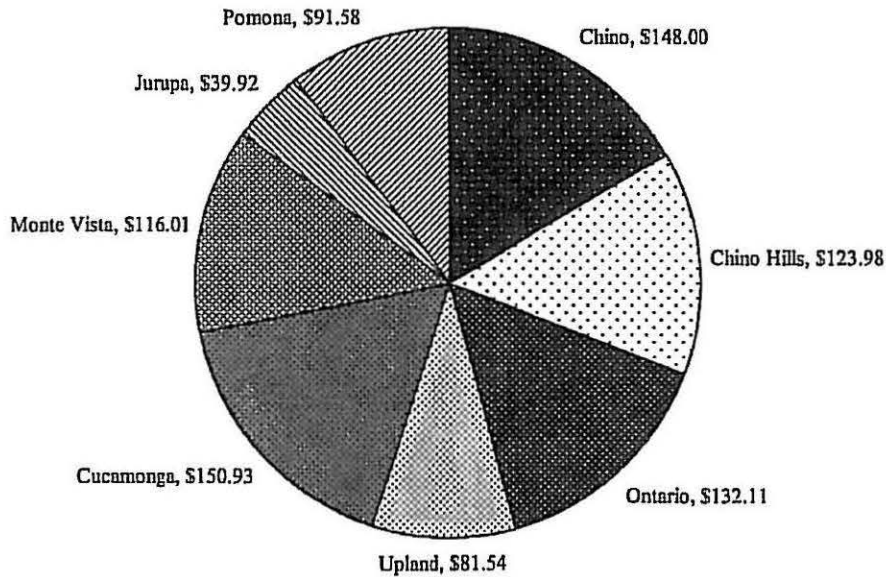


Figure 4

Figure 4 depicts the distribution of net benefits per acre-foot of residual water demand across individual agencies in the Basin resulting from the program elements in the Peace II scenario. Overall, the present value of the net benefit to all parties over the 24 year horizon resulting from a move from baseline conditions to Peace conditions is \$905 million and the total projected water demand over this period is 9.1 million AF, which implies an average return of \$98.53 per acre-foot to the agencies encompassed by the study.

Noting, as before, that Fontana Union Water Company and San Antonio Water Company have available surface water and other groundwater supplies in excess of their demand, and controlling for agency scale on the basis of residual demand for Basin water among the remaining producers, the net benefit resulting from the combined program elements in the Peace II Agreement lies between \$39.92/AF for Jurupa CSD to \$150.93 for Cucamonga Valley Water District.

The net benefit/AF received by Jurupa Community Services District is significantly smaller than the net benefit/AF received by other producers, because of systematic differences in the way this agency meets consumer water demand. Jurupa Community Services District is disadvantaged in the ability to capitalize on program elements that improve Basin performance by the large share of desalter water for urban water supply it receives, which cannot be defrayed by the development of new Basin supplies, and by a negligible reliance on imported water from MWD.

Among the remaining agencies, the Cities of Pomona and Upland receive a smaller share of the net benefit/AF, while Monte Vista Water District, the Cities of Chino, Ontario, Upland, and Chino Hills, and Cucamonga Valley Water District each receive a net benefit/AF above \$116/AF.

## 7. Alternative Scenarios

This section examines the sensitivity of the results to variations in various assumptions underlying the model. In theory, each of the factors considered here has the potential to change the relative rankings among agencies with respect to benefits per acre-foot. For example, increasing the cost of capital will tend to elevate the ranking of agencies that receive benefits in early years. These sensitivity analyses are intended to bracket actual results and measure the sensitivity of outcomes to changes in assumptions.

Five parameters are varied and the model results are recalculated in each case. The alternative scenarios considered are: (i) variation in the share of the desalter replenishment obligation attributed to the appropriate pool in the baseline case; (ii) variation in the discount rate; (iii) variation in Urban Water Demands; (iv) variation in the availability of Tier 1 water to agencies in the Basin; and (v) increases in effective recycled water prices due to the long-run average cost of recycled water infrastructure improvements.

The model results are most sensitive to the scenario in which all Tier 2 water purchases in the model are replaced with Tier 1 water purchases at the lower MWD rate. The results of this scenario are shown in Table 4. This scenario provides a bracketing assumption on the value of the outside water options available to agencies and it is unlikely that each agency can meet annual increases in urban water demand every year with a continued expansion of Tier 1 purchases. To the extent that individual agencies differ in their access to Tier 1 water, moreover, market forces would lead to a displacement of Tier 2 water purchases on the extensive margin of supply before any displacement occurs of Tier 1 water purchases, so that a model that considered a relatively equal mix of Tier 1 and Tier 2 water supplies would not result in values near the midpoint between the Tier 1 scenario and the Tier 2 scenario. Nonetheless, the total net benefit in the Basin under Peace II scenario remains high—\$611.7 million (\$88.89/AF)—even when the entire increase in Basin supply is valued at the displacement cost of Tier 1 water.

The model results are fairly robust to variations in the remaining parameters. In total, the net benefit of the Peace II program elements varies across the scenarios in a range between \$806.7 million - \$864.4 million (\$87.87/AF - \$104.22/AF) in each scenario, relative to the \$904.6 million (\$98.53/AF) at baseline levels of the parameters.

**Table 4: Tier 2 Replaced By Tier 1**

	Net Benefit (1000s of \$)		Net Benefit/AF	
	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>
City of Chino	\$8,549	\$77,828	\$13.18	\$120.03
City of Chino Hills	\$18	\$46,218	\$0.03	\$77.92
City of Ontario	\$1,451	\$148,970	\$0.83	\$84.73
City of Upland	\$328	\$27,599	\$0.61	\$51.04
Cucamonga Valley Water District	\$14,025	\$175,240	\$7.61	\$95.10
Fontana Union Water Co.	\$1,451	\$26,880		
Monte Vista Water District	(\$2,090)	\$27,005	(\$5.99)	\$77.39
San Antonio Water Company	\$342	\$6,337		
Jurupa CSD	\$10,611	\$29,242	\$12.01	\$33.11
City of Pomona	(\$5,720)	\$46,453	(\$7.76)	\$62.99
<b>Total</b>	<b>\$28,965</b>	<b>\$611,773</b>	<b>\$3.15</b>	<b>\$66.63</b>

**Table 5: 50% of Desalter Obligation Paid by Ag Pool**

	Net Benefit (1000s of \$)		Net Benefit/AF	
	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>
City of Chino	\$15,450	\$91,122	\$23.83	\$140.53
City of Chino Hills	\$9,681	\$71,001	\$16.32	\$119.70
City of Ontario	\$28,888	\$218,613	\$16.43	\$124.34
City of Upland	\$6,017	\$40,661	\$11.13	\$75.20
Cucamonga Valley Water District	\$56,320	\$273,782	\$30.56	\$148.57
Fontana Union Water Co.	(\$2,836)	\$22,592		
Monte Vista Water District	\$1,232	\$34,687	\$3.53	\$99.41
San Antonio Water Company	(\$669)	\$5,326		
Jurupa CSD	\$13,297	\$32,779	\$15.06	\$37.11
City of Pomona	(\$5,280)	\$54,068	(\$7.16)	\$73.31
<b>Total</b>	<b>\$122,101</b>	<b>\$844,632</b>	<b>\$13.30</b>	<b>\$91.99</b>

**Table 6: 5.5% Discount Rate**

	<b>Net Benefit (1000s of \$)</b>		<b>Net Benefit/AF</b>	
	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>
City of Chino	\$17,681	\$84,906	\$27.27	\$130.95
City of Chino Hills	\$11,108	\$65,916	\$18.73	\$111.13
City of Ontario	\$38,234	\$207,227	\$21.75	\$117.86
City of Upland	\$8,595	\$39,560	\$15.90	\$73.16
Cucamonga Valley Water District	\$54,862	\$247,990	\$29.77	\$134.57
Fontana Union Water Co.	\$4,231	\$26,907		
Monte Vista Water District	\$6,265	\$36,087	\$17.95	\$103.42
San Antonio Water Company	\$997	\$6,343		
Jurupa CSD	\$13,877	\$31,426	\$15.71	\$35.58
City of Pomona	\$7,315	\$60,400	\$9.92	\$81.90
<b>Total</b>	<b>\$163,165</b>	<b>\$806,761</b>	<b>\$17.77</b>	<b>\$87.87</b>

**Table 7: 10% Conservation**

	Net Benefit (1000s of \$)		Net Benefit/AF	
	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>
City of Chino	\$18,131	\$88,819	\$31.07	\$152.20
City of Chino Hills	\$13,070	\$70,172	\$24.48	\$131.45
City of Ontario	\$44,196	\$223,937	\$27.93	\$141.52
City of Upland	\$8,602	\$39,805	\$17.68	\$81.80
Cucamonga Valley Water District	\$64,718	\$268,848	\$39.02	\$162.10
Fontana Union Water Co.	\$4,989	\$30,656		
Monte Vista Water District	\$6,205	\$37,920	\$19.76	\$120.75
San Antonio Water Company	\$1,176	\$7,227		
Jurupa CSD	\$15,189	\$33,707	\$19.11	\$42.40
City of Pomona	\$6,788	\$63,259	\$10.23	\$95.30
<b>Total</b>	<b>\$183,064</b>	<b>\$864,350</b>	<b>\$22.07</b>	<b>\$104.22</b>



**Table 8: 50% Increase in Recycled Water Price**

	Net Benefit (1000s of \$)		Net Benefit/AF	
	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>	<i>Peace I vs. Baseline</i>	<i>Peace II vs. Baseline</i>
City of Chino	\$20,294	\$88,913	\$31.30	\$137.13
City of Chino Hills	\$12,217	\$69,270	\$20.60	\$116.78
City of Ontario	\$42,547	\$220,779	\$24.20	\$125.57
City of Upland	\$9,442	\$42,215	\$17.46	\$78.07
Cucamonga Valley Water District	\$60,667	\$262,234	\$32.92	\$142.30
Fontana Union Water Co.	\$4,839	\$30,268		
Monte Vista Water District	\$7,025	\$39,277	\$20.13	\$112.56
San Antonio Water Company	\$1,141	\$7,136		
Jurupa CSD	\$15,772	\$31,962	\$17.86	\$36.19
City of Pomona	\$8,189	\$66,517	\$11.10	\$90.19
<b>Total</b>	<b>\$182,133</b>	<b>\$858,571</b>	<b>\$19.84</b>	<b>\$93.51</b>

# Attachment D

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Attachment "D"

**2007 SUPPLEMENT**  
**TO THE**  
**IMPLEMENTATION PLAN**  
**OPTIMUM BASIN MANAGEMENT PROGRAM**  
**FOR THE**  
**CHINO BASIN**

**INTRODUCTION**

This document describes the supplement to the implementation plan for the Chino Basin Optimum Basin Management Program (OBMP), as determined through the 2007 "Peace II" process.

**PROGRAM ELEMENT 1 DEVELOP AND IMPLEMENT**  
**COMPREHENSIVE MONITORING PROGRAM**

**A. Production Monitoring Program**

All active wells (except for minimum user wells) are now metered. Watermaster reads the production data from the meters on a quarterly basis and enters these data into Watermaster's relational database.

**B. Surface Water Discharge and Quality Monitoring**

Water Quality and Quantity in Recharge Basins. Watermaster measures the quantity and quality of storm and supplemental water entering the recharge basins. Pressure transducers or staff gauges are used to measure water levels during recharge operations. In addition to these quantity measurements, imported water quality values for State Water Project water are obtained from the Metropolitan Water District of Southern California (MWDSC) and recycled water quality values for the RP1 and RP4 treatment plant effluents are obtained from IEUA. Watermaster monitors the storm water quality in the eight major channels (San Antonio, West Cucamonga, Cucamonga, Deer Creek, Day Creek, San Sevaine, West Fontana, and DeClez) usually after each major storm event. Combining the measured flow data with the respective water qualities enables the

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calculation of the blended water quality in each recharge basin, the “new yield” to the Chino Basin, and the adequate dilution of recycled water.

Surface Water Monitoring in Santa Ana River (SAR). Watermaster measures the discharge of the river and selected water quality parameters to determine those reaches of the SAR that are gaining flow from Chino Basin and/or, conversely, those reaches that are losing flow into the Chino Basin. These bi-weekly flow and water quality measurements are combined with discharge data from permanent USGS and Orange County Water District (OCWD) stream gauges and discharge data from publicly owned treatment works (POTWs). These data are used in groundwater modeling to assess the extent of hydraulic control.

#### **HCMP Annual Report**

In January 2004, the RWQCB amended the Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin to incorporate an updated total dissolved solids (TDS) and nitrogen (N) management plan. The Basin Plan Amendment includes both “antidegradation” and “maximum benefit” objectives for TDS and nitrate-nitrogen for the Chino and Cucamonga groundwater management zones. The application of the “maximum benefit” objectives relies on Watermaster and the IEUA’s implementation of a specific program of projects and requirements, which are an integral part of the OBMP. On April 15, 2005, the RWQCB adopted resolution R8-2005-0064; thus approving the Surface Water Monitoring Program and Groundwater Monitoring Program in support of maximum benefit commitments in the Chino and Cucamonga Basins. Watermaster and the IEUA completed the 2006 Annual Report, which summarizes the results for those two programs, and submitted it to the RWQCB on April 16, 2007 in partial fulfillment of maximum benefit commitments.

#### **Chino Basin Recycled Water Groundwater Recharge Program**

The IEUA, Watermaster, Chino Basin Water Conservation District, and San Bernardino County Flood Control District jointly sponsor the Chino Basin Recycled Water Groundwater Recharge Program. This is a comprehensive water supply program to enhance water supply reliability and improve the groundwater quality in local drinking water wells throughout the Chino Groundwater Basin by increasing the recharge of stormwater, imported water, and recycled water. The recharge program is regulated under RWQCB Order No. R8-2005-0033 and Monitoring and Reporting Program No. R8-2005-0033.

Monitoring Activities. Watermaster and the IEUA collect weekly and bi-weekly water quality samples from basins that are actively recharging recycled water and from lysimeters installed within those basins. Monitoring wells located down gradient of the recharge basins are sampled every two weeks during the reporting period for a total of about 100 samples.

Construction Activities. Lysimeters and monitoring wells associated with the RP-3, DeClez, and Ely Basins were installed in fiscal year (FY) 2006/07.

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### **C. Ground Level Monitoring Program**

Watermaster developed a multifaceted land surface monitoring program to develop data for a long-term management plan for land subsidence in Management Zone 1 (MZ-1). The monitoring program consisted of three main elements:

- An aquifer system monitoring facility consisting of multiple depth piezometers and a dual bore extensometer.
- The application of synthetic aperture radar interferometry (InSAR) to measure historical land surface deformation.
- Benchmark surveys to measure land surface deformation, "ground truth" the InSAR data, and evaluate effectiveness of the long term management plan.

Following two years of data collection and analysis, Watermaster submitted the MZ-1 Summary Report in October 2005, which contained Guidance Criteria to minimize subsidence and fissuring. The Guidance Criteria included a listing of Managed Wells and their owners subject to the criteria, a map of the so-called Managed Area, an initial threshold water level (Guidance Level) of 245 feet below the top of the PA-7 well casing, and a plan for ongoing monitoring and notification. Since October 2005, the MZ-1 Summary Report and the Guidance Criteria contained therein have been discussed extensively by the parties involved, and were adopted by the Watermaster Board at its May 2006 Meeting. The final MZ-1 Subsidence Management Plan was adopted by the Watermaster Board at its June 2007 Meeting, was subsequently revised, and was submitted to the Court for approval at a hearing on November 15, 2007.

The MZ-1 monitoring program continues unabated. Water level monitoring expanded to the central regions of MZ-1 with the installation of transducers/data loggers at selected wells owned by the City of Chino, the Monte Vista Water District, and the City of Pomona. This expansion of the water level monitoring program is the initial effort to better understand the mechanisms behind ongoing land subsidence in this region.

### **PROGRAM ELEMENT 2 – DEVELOP AND IMPLEMENT COMPREHENSIVE RECHARGE PROGRAM**

#### **INTRODUCTION**

Construction on the Chino Basin Facilities Improvement Project (CBFIP) Phase I was completed by December 31, 2005 at a cost of \$38M; 50% from a SWRCB Proposition 13 Grant, and 25% each from Watermaster and the IEUA. A CBFIP Phase II list of projects was developed by Watermaster and the IEUA, including monitoring wells, lysimeters, recycled water connections, SCADA system expansions, three MWDSC turnouts, and berm heightening and hardening. At a cost of approximately \$15M, these Phase II facilities will be financed through a 50% Grant from DWR and 25% each from Watermaster and the IEUA.

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In FY 2005-2006, the CBFIP Phase I facilities were able to recharge 49,000 AF of storm and supplemental water. By the start of FY 2009-2010, most of the basins will be able to operate on a 12 months per year basis with combinations of storm, imported, and recycled water, with occasional downtime for silt and organic growth removal. Operations and basin planning are coordinated through the Groundwater Recharge Coordinating Committee (GRCC) which meets monthly.

Update to the Recharge Master Plan. The Recharge Master Plan will be updated as frequently as necessary and not less than every five (5) years, to reflect an appropriate schedule for planning, design, and physical improvements as may be required to offset the controlled mining at the end of the Peace Agreement and the end of forgiveness for Desalter replenishment.

Coordination. Watermaster will ensure that the members of the Appropriative Pool will coordinate the development of their respective Urban Water Management Plans and Water Supply Master Plans with Watermaster as follows.

- (a) Watermaster will obtain from each Appropriator that prepares an Urban Water Management Plan and Water Supply Plan copies of their existing and proposed plans.
- (b) Watermaster will use the Plans in evaluating the adequacy of the Recharge Master Plan and other OBMP Implementation Plan program elements.
- (c) Each Appropriator will provide Watermaster with a draft in advance of adopting any proposed changes to their Urban Water Management Plans and in advance of adopting any material changes to their Water Supply Master Plans respectively in accordance with the customary notification routinely provided to other third parties to offer Watermaster a reasonable opportunity to provide informal input and informal comment on the proposed changes.
- (d) Any party that experiences the loss or the imminent threatened loss of a material water supply source will provide reasonable notice to Watermaster of the condition and the expected impact, if any, on the projected groundwater use.

Suspension. To ameliorate any long-term risks attributable to reliance upon un-replenished groundwater production by the Desalters, the annual availability of any portion of the 400,000 acre-feet set aside for forgiveness, is expressly subject to Watermaster making an annual finding it is in substantial compliance with the revised Watermaster Recharge Master Plan pursuant to Paragraph 7.3 above.

Acknowledgment re 6,500 Acre-Foot Supplemental Recharge. The Parties have made the following acknowledgments regarding the 6,500 Acre-Foot Supplemental Recharge:

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- (a) A fundamental premise of the Physical Solution is that all water users dependent upon Chino Basin will be allowed to pump sufficient waters from the Basin to meet their requirements. To promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin, Watermaster has committed to use its best efforts to direct recharge relative to production in each area and sub-area of the Basin and to achieve long-term balance between total recharge and discharge. The Parties acknowledge that to assist Watermaster in providing for recharge, the Peace Agreement sets forth a requirement for Appropriative Pool purchase of 6,500 acre-feet per year of Supplemental Water for recharge in Management Zone 1 (MZ1). The purchases have been credited as an addition to Appropriative Pool storage accounts. The water recharged under this program has not been accounted for as Replenishment water.
- (b) Watermaster was required to evaluate the continuance of this requirement in 2005 by taking into account provisions of the Judgment, Peace Agreement and OBMP, among all other relevant factors. It has been determined that other obligations in the Judgment and Peace Agreement, including the requirement of hydrologic balance and projected replenishment obligations, will provide for sufficient wet-water recharge to make the separate commitment of Appropriative Pool purchase of 6,500 acre-feet unnecessary. Therefore, because the recharge target as described in the Peace Agreement has been achieved, further purchases under the program will cease and Watermaster will proceed with operations in accordance with the provisions of paragraphs (c), (d) and (e) below.
- (c) The parties acknowledge that, regardless of Replenishment obligations, Watermaster will independently determine whether to require wet-water recharge within MZ1 to maintain hydrologic balance and to provide equal access to groundwater in accordance with the provisions of this Section 8.4 and in a manner consistent with the Peace Agreement, OBMP and the Long Term Plan for Subsidence. Watermaster will conduct its recharge in a manner to provide hydrologic balance within, and will emphasize recharge in MZ1. Accordingly, the Parties acknowledge and agree that each year Watermaster shall continue to be guided in the exercise of its discretion concerning recharge by the principles of hydrologic balance.
- (d) Consistent with its overall obligations to manage the Chino Basin to ensure hydrologic balance within each management zone, for the duration of the Peace Agreement (until June of 2030), Watermaster will ensure that a minimum of 6,500 acre-feet of wet water recharge occurs within MZ1 on an annual basis. However, to the extent that water is unavailable for recharge or there is no replenishment obligation in any year, the obligation to recharge 6,500 acre-feet will accrue and be satisfied in subsequent years.



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- (1) Watermaster will implement this measure in a coordinated manner so as to facilitate compliance with other agreements among the parties, including but not limited to the Dry-Year Yield Agreements.
  - (2) In preparation of the Recharge Master Plan, Watermaster will consider whether existing groundwater production facilities owned or controlled by producers within MZ1 may be used in connection with an aquifer storage and recovery ("ASR") project so as to further enhance recharge in specific locations and to otherwise meet the objectives of the Recharge Master Plan.
- (e) Five years from the effective date of the Peace II Measures, Watermaster will cause an evaluation of the minimum recharge quantity for MZ1. After consideration of the information developed in accordance with the studies conducted pursuant to paragraph 3 below, the observed experiences in complying with the Dry Year Yield Agreements as well as any other pertinent information, Watermaster may increase the minimum requirement for MZ1 to quantities greater than 6,500 acre-feet per year. In no circumstance will the commitment to recharge 6,500 acre-feet be reduced for the duration of the Peace Agreement.

**Hydraulic Control.** In accordance with the purpose and objective of the Physical Solution to "establish a legal and practical means for making the maximum reasonable beneficial use of the waters of the Chino Basin" (paragraph 39) and the identified Basin Management Parameters, Watermaster will manage the Basin to secure Hydraulic Control through controlled overdraft for a period of approximately 23 (twenty-three) years (Re-Operation). Hydraulic Control ensures that the water management activities in the Chino North Management Zone do not cause materially adverse impacts to the beneficial uses of the Santa Ana River downstream of Prado Dam. "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is more fully described and set forth in Exhibit 1 to this Appendix I.

**Re-Operation.** Independent of Watermaster determinations regarding Operating Safe Yield and without effect on or regard for the parties' respective rights thereto in any year, Re-Operation of the Basin through the managed withdrawal of groundwater from the Basin is required to achieve and maintain Hydraulic Control. Given the expected water quality, increased yield and economic benefits associated with Hydraulic Control, a Re-Operation through coordinated and controlled overdraft is a prudent and efficient use of the Basin resources *to the extent* groundwater is required to achieve and maintain Hydraulic Control. "Re-operation" means the potential increase in the accumulated overdraft from 200,000 acre-feet previously authorized under Exhibit I over the period 1978 through 2017 to 600,000 acre-feet through 2030, with the 400,000 acre-feet increase being expressly allocated to meet the replenishment obligation of the Desalters. Accordingly, a cumulative change in storage of up to 400,000 acre-feet greater than initially authorized by the original Judgment may result. However, the use of



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water pumped pursuant to Re-operation is subject to the following limitations:

(a) Future Desalter Groundwater Production Facilities. Future Desalter groundwater production facilities will emphasize Production from the southern end of the Basin.

(b) The Material Physical Injury. Controlled overdraft must not cause material physical injury to any Party or the Basin.

(c) Proposed Schedule. An initial schedule for Re-Operation, including annual and cumulative quantities to be pumped through Re-Operation will be developed. Watermaster may modify the proposed schedule from time to time as it may be prudent under the circumstances, but only after first obtaining Court approval.

(d) Annual Accounting. Watermaster will prepare an annual summary accounting of the cumulative total of groundwater production and desalting from all authorized desalters and other activities authorized by the Optimum Basin Management Program in a schedule that: (i) identifies the total change in groundwater storage that will result from the Re-Operation; and (ii) characterizes and accounts for all water that is projected to be produced by all authorized desalters.

(e) Recharge and Replenishment Compliance. Watermaster must be in substantial compliance with its then existing recharge and replenishment plans and obligations, and will make an annual finding whether or not it is in compliance.

(f) Replenishment. Groundwater produced by Desalters in connection with Re-Operation to achieve Hydraulic Control will be replenished through, inter alia, the water made available through controlled overdraft.

(g) Suspension. Re-Operation and Watermaster's apportionment of controlled overdraft will not be suspended in the event that Hydraulic Control is secured in any year *before* the full 400,000 acre-feet has been produced so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures to avoid Material Physical Injury and that equitably addresses this contingency, and (ii) Watermaster continues to demonstrate a credible material progress toward obtaining sufficient capacity to recharge sufficient quantities of water to cause the Basin to return to a new equilibrium at the conclusion of the Re-Operation.

(h) Definition of Desalters. "Desalters" means the Chino I Desalter, the Chino I Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities' and processes that remove salt from the Basin water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter. Desalter treatment and delivery facilities for the desalted water include pumping and storage facilities and treatment and

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disposal capacity in the Santa Ana Regional Interceptor.

**PROGRAM ELEMENT 3 DEVELOP AND IMPLEMENT WATER SUPPLY PLAN FOR THE IMPAIRED AREAS OF THE BASIN, PROGRAM ELEMENT 5 DEVELOP AND IMPLEMENT REGIONAL SUPPLEMENTAL WATER PROGRAM**

Construction on the Chino I Desalter Expansion and the Chino II Desalter facilities was completed in February 2006 and an application has been made for \$1.6 M in Proposition 50 funds to add 8 MGD of ion exchange capacity to the Chino II Desalter. As currently configured, the Chino I Desalter provides 2.6 MGD of treated (air stripping for VOC removal) water from Wells Nos. 1-4, 4.9 MGD of treated (ion exchange for nitrate removal) water from Wells Nos. 5-15, and 6.7 MGD of treated (reverse osmosis for nitrate and TDS removal) water from Wells Nos. 5-15 for a total of 14.2 MGD (16,000 AFY). The Chino II Desalter provides 4.0 MGD of ion exchange treated water and 6.0 MGD of reverse osmosis treated water from 8 additional wells for a total of 10.0 MGD (11,000 AFY).

Consultants to the City of Ontario and Western Municipal Water District recently completed their evaluation of three alternative configurations for expansion of the Chino Desalters. Their results are presented in the report "Chino Desalter Phase 3 Alternatives Evaluation," dated May 2007. Essentially, they found that the preferred alternative would be to construct a 10.5 mgd (10,600 AFY) expansion to the existing Chino II Desalter, with raw water coming from the existing Wells Nos. 13, 14, and 15. A new Chino Creek Well Field, required for hydraulic control of the basin, would replace the raw water lost from the Wells Nos. 13, 14, and 15. Negotiations are currently underway between the City of Ontario, WMWD, and JCSD to determine capacity allocations and cost sharing for the new facilities.

**PROGRAM ELEMENT 4 DEVELOP AND IMPLEMENT COMPREHENSIVE GROUNDWATER MANAGEMENT PLAN FOR MANAGEMENT ZONE 1 (MZ1)**

The occurrence of subsidence and fissuring in Management Zone 1 is not acceptable and should be reduced to tolerable levels or abated. The OBMP calls for a management plan to reduce or abate the subsidence and fissuring problems to the extent that it may be caused by production in MZ1.

In October 2005, Watermaster completed the MZ-1 Summary Report, including the Guidance Criteria. Since then the impacted parties have had numerous meetings to transform the Summary Report into a Long-term Management Plan. The Summary Report and the Guidance Criteria

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were adopted by the Watermaster Board in May 2006, and the Long-term Management Plan was adopted in June 2007, was subsequently revised, and was submitted to the Court for approval at a hearing on November 15, 2007..

**PROGRAM ELEMENT 6 DEVELOP AND IMPLEMENT COOPERATIVE PROGRAMS WITH THE REGIONAL BOARD AND OTHER AGENCIES TO IMPROVE BASIN MANAGEMENT, and PROGRAM ELEMENT 7 SALT MANAGEMENT PROGRAM**

On going discussions are being held with the RWQCB and the San Bernardino County Department of Airports in order to determine the engineering solution and costs for remediating the TCE plume at the Chino Airport. The consulting engineer for the SBCDA is currently characterizing the extent of off-site contamination and investigating remedial alternatives. For the Ontario Airport (OIA) plume, the Potentially Responsible Parties (PRPs) have been working with Watermaster to quantify the depth and extent of the TCE plume. At the Stringfellow site, the consultants to DHS have been investigating whether the perchlorate plume from the site adds to the existing perchlorate levels in the Santa Ana River, or whether the perchlorate plume is diverted towards the Chino II Desalter well field. Lastly, Watermaster continues to monitor the activities of General Electric's (GE) remediation at the Flat Iron facility and their efforts to develop a new location for recharge of their treated effluent.

**MZ-3 Monitoring Program.**

The former Kaiser plume has been incorporated into an overall monitoring program for the MZ-3 area. The MZ-3 monitoring program is also assessing the groundwater quality impairment from total dissolved solids (TDS), nitrate, and perchlorate. Quarterly samples will now be collected from all 4 wells to help recharacterize the Kaiser plume.

**Ontario International Airport (OIA) Volatile Organic Chemical Plume.**

Watermaster has provided water quality, water level, and well construction data from more than 400 private wells and 200 public wells to the RWQCB, which in turn forwarded the database to the PRPs pursuant to their request. Subsequently the PRPs submitted their sampling work plan and health and safety plan for the well installation and sampling.

**Chino Airport VOC Plume.**

Watermaster met with the RWQCB, the San Bernardino County Department of Airports, and their consultant Tetra Tech on April 18, May 25, and June 26, 2007 to discuss a joint remediation of the VOC plume from the airport. Such a joint remediation would help address other issues in the southwestern portion of Chino Basin such as maintenance of hydraulic control and the provision of high quality drinking water in an area of increasing demand. As a result of these meetings, Watermaster agreed to provide a database containing well construction information, water quality, water levels, and production for wells located southwest of the Chino airport. In

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addition, Watermaster provided results from sampling all the wells in this location to provide up-to-date analytical data on all the possible contaminants in these wells. These data are being reviewed with Tetra Tech to begin the engineering of appropriate remedial actions.

**GE Flat Iron Remediation.**

Finally, with respect to the GE Flat Iron remediation, GE conducted a screening of options for the disposal of treated effluent from their operational pump and treat facilities. Currently, GE discharges their effluent into the Ely Basins, where it percolates back into the groundwater. However, this operation limits Watermaster's ability to recharge recycled water into the Ely Basins and, consequently, Watermaster has asked that GE develop alternative disposal means. As a result of their screening, GE has decided to investigate, in detail, the construction of groundwater injection wells that would be operated in conjunction with their own recharge basin. GE completed their planning in December 2006 and began detailed design based upon the RWQCB's approval of the concept.

**TDS and Nitrogen Monitoring Pursuant to the 2004 Basin Plan Amendment**

Pursuant to the 2004 Basin Plan Amendment and the Watermaster/IEUA permit to recharge recycled water, Watermaster and the IEUA have conducted and will continue to conduct groundwater and surface water monitoring programs. Quarterly HCMP reports that summarize data collection efforts will continue to be submitted to the RWQCB.

**PROGRAM ELEMENT 8 DEVELOP AND IMPLEMENT GROUNDWATER STORAGE MANAGEMENT PROGRAM, PROGRAM ELEMENT 9 DEVELOP AND IMPLEMENT STORAGE AND RECOVERY PROGRAMS**

Currently, there is only one groundwater storage program approved in the Chino Basin: the 100,000 acre-ft Dry-Year Yield Program with the Metropolitan Water District of Southern California (MWD). The MWD, IEUA, and Watermaster are considering expanding this program by an additional 50,000 acre-ft to 150,000 acre-ft over the next few years. Watermaster is also considering an additional 150,000 acre-ft in programs with non-party water agencies.

# Attachment E



**Attachment "E"**

**Desalter Replenishment with Most Rapid Depletion of the Re-Operation Account**

(acre-ft/yr)

Fiscal Year	Desalter Pumping	New Yield	Re-Operation			Residual Replenishment Obligation
			Replenishment Allocation for Desalter III	Replenishment Allocation to CDA	Balance	
					400,000	0
2006 / 2007	28,700	8,610	0	20,090	379,910	0
2007 / 2008	28,700	8,610	0	20,090	359,820	0
2008 / 2009	28,700	8,610	0	20,090	339,730	0
2009 / 2010	28,700	8,610	0	20,090	319,640	0
2010 / 2011	28,700	8,610	0	20,090	299,550	0
2011 / 2012	28,700	8,610	0	20,090	279,460	0
2012 / 2013	34,050	10,215	5,000	18,835	255,625	0
2013 / 2014	39,400	11,820	10,000	17,580	228,045	0
2014 / 2015	39,400	11,820	10,000	17,580	200,465	0
2015 / 2016	39,400	11,820	10,000	17,580	172,885	0
2016 / 2017	39,400	11,820	10,000	17,580	145,305	0
2017 / 2018	39,400	11,820	10,000	15,305	120,000	2,275
2018 / 2019	39,400	11,820	10,000		110,000	17,580
2019 / 2020	39,400	11,820	10,000		100,000	17,580
2020 / 2021	39,400	11,820	10,000		90,000	17,580
2021 / 2022	39,400	11,820	10,000		80,000	17,580
2022 / 2023	39,400	11,820	10,000		70,000	17,580
2023 / 2024	39,400	11,820	10,000		60,000	17,580
2024 / 2025	39,400	11,820	10,000		50,000	17,580
2025 / 2026	39,400	11,820	10,000		40,000	17,580
2026 / 2027	39,400	11,820	10,000		30,000	17,580
2027 / 2028	39,400	11,820	10,000		20,000	17,580
2028 / 2029	39,400	11,820	10,000		10,000	17,580
2029 / 2030	39,400	11,820	10,000		0	17,580
<b>Totals</b>	<b>876,050</b>	<b>262,815</b>	<b>175,000</b>	<b>225,000</b>		<b>213,235</b>

**Attachment "E"**

**Desalter Replenishment with Proportional Depletion of the Re-Operation Account**

(acre-ft/yr)

Fiscal Year	Desalter Pumping	New Yield	Re-Operation			Residual Replenishment Obligation
			Replenishment Allocation for Desalter III	Replenishment Allocation to CDA	Balance	
					400,000	0
2006 / 2007	28,700	8,610	0	7,371	392,629	12,719
2007 / 2008	28,700	8,610	0	7,371	385,258	12,719
2008 / 2009	28,700	8,610	0	7,371	377,886	12,719
2009 / 2010	28,700	8,610	0	7,371	370,515	12,719
2010 / 2011	28,700	8,610	0	7,371	363,144	12,719
2011 / 2012	28,700	8,610	0	7,371	355,773	12,719
2012 / 2013	34,050	10,215	5,000	8,745	342,028	10,090
2013 / 2014	39,400	11,820	10,000	10,119	321,908	7,461
2014 / 2015	39,400	11,820	10,000	10,119	301,789	7,461
2015 / 2016	39,400	11,820	10,000	10,119	281,670	7,461
2016 / 2017	39,400	11,820	10,000	10,119	261,551	7,461
2017 / 2018	39,400	11,820	10,000	10,119	241,431	7,461
2018 / 2019	39,400	11,820	10,000	10,119	221,312	7,461
2019 / 2020	39,400	11,820	10,000	10,119	201,193	7,461
2020 / 2021	39,400	11,820	10,000	10,119	181,073	7,461
2021 / 2022	39,400	11,820	10,000	10,119	160,954	7,461
2022 / 2023	39,400	11,820	10,000	10,119	140,835	7,461
2023 / 2024	39,400	11,820	10,000	10,119	120,715	7,461
2024 / 2025	39,400	11,820	10,000	10,119	100,596	7,461
2025 / 2026	39,400	11,820	10,000	10,119	80,477	7,461
2026 / 2027	39,400	11,820	10,000	10,119	60,357	7,461
2027 / 2028	39,400	11,820	10,000	10,119	40,238	7,461
2028 / 2029	39,400	11,820	10,000	10,119	20,119	7,461
2029 / 2030	39,400	11,820	10,000	10,119	0	7,461
<b>Totals</b>	<b>876,050</b>	<b>262,815</b>	<b>175,000</b>	<b>225,000</b>		<b>213,235</b>

# Attachment F



**ATTACHMENT "F"**

**DISCRETIONARY ACTIONS  
TO AMEND WATERMASTER RULES AND REGULATIONS**

Pursuant to the Judgment, the Peace Agreement and Watermaster Rules and Regulations, Watermaster will undertake the following actions:

**I. Agricultural Pool Reallocation**

A. Section 6.3(c) of the Watermaster Rules and Regulations shall be amended to read:

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

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

B. Section 6.3(d) of the Watermaster Rules and Regulations shall be added to read:

“(d) In the event actual Production from the Agricultural Pool does not exceed 82,800 acre-feet in any one year or 414,000 acre-feet in any five years and total Production from all the uses set forth in section 6.3(a) above does not exceed 82,800 acre-feet in any year, the amount of surplus water made available to the members of the Appropriative Pool shall be allocated according to the formula described in 6.3(c).”

- C. Section 9.6 of the Watermaster Rules and Regulations will be amended to include an articulated rule of construction that: "This provision will be construed by as permitting Watermaster to accept new voluntary agreements only to the extent that such voluntary agreements occur within areas eligible for conversion as described in Attachment 1 to the Judgment, previously added to the Judgment as an amendment by Order of the Court dated November 17, 1995."
- D. By Resolution, Watermaster will ratify all current Watermaster accounting practices with regard to Land Use Conversions, Assignments, voluntary agreements, Early Transfer, and reallocation of surplus Agricultural Pool water and continue to implement such provisions in a consistent manner.

## II. Storage

- A. By Resolution, Watermaster has previously established a uniform loss percentage for all water held in storage at 2 percent, until it may be recalculated based upon the best available scientific information.
- B. Watermaster will impose a uniform loss against all water in storage in an amount of 2 (two) percent where the Party holding the storage account: (i) has previously contributed to the implementation of the OBMP as a Party to the Judgment, is in compliance with their continuing covenants under the Peace Agreement or in lieu thereof they have paid or delivered to Watermaster "financial equivalent" consideration to offset the cost of past performance prior to the implementation of the OBMP and (ii) promised continued future compliance with Watermaster Rules and Regulations. Where a Party has not satisfied the requirement of B(i) and B(ii) Watermaster will assess a 6 (six) percent loss. Following a Watermaster determination that Hydraulic Control has been achieved, Watermaster will assess losses of less than one 1 percent where the Party satisfies B(i) and B(ii).
- C. Section 8.1(f)(iii) a) and b) of Watermaster Rules and Regulations will be amended to substitute the date of July 1, 2010 for July 1, 2005.
- D. Section 8.2(a), (b), (g), (h) of Watermaster Rules and Regulations will be amended to substitute the date of July 1, 2010 for July 1, 2005.

## III. Errors

- A. A new Section 3.3. of Watermaster Rules and Regulations and shall read as follows:

"3.3 Error Corrections. All reports or other information submitted to Watermaster by the parties shall be subject to a four-year limitations period regarding the correction of errors contained in such submittals. In addition, all information generated by Watermaster shall be subject to the same four-year

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limitations period. All corrections to errors shall apply retroactively for no more than four years.”

**IV. Further Conforming Changes.**

A. After consultation with the stakeholders, Watermaster may make further conforming changes to its Rules and Regulations to eliminate any inconsistencies with the Peace II measures and to more effectively implement the measures from time to time.

Date: \_\_\_\_\_

\_\_\_\_\_

**For CHINO BASIN WATERMASTER**

# Attachment G

September 21, 2007

**Attachment "G"**

**PURCHASE AND SALE AGREEMENT FOR  
THE PURCHASE OF  
WATER BY WATERMASTER  
FROM OVERLYING (NON-AGRICULTURAL) POOL**

THIS AGREEMENT (Agreement) is dated 27th day of September, 2007, regarding the Chino Groundwater Basin.

**RECITALS**

**WHEREAS**, the Peace Agreement expressly authorized a transfer of water from the Overlying (Non-Agricultural) Pool to Watermaster for use as replenishment for the Desalters and for use in connection with a Storage and Recovery Program;

**WHEREAS**, Watermaster is evaluating its replenishment needs under the Judgment and several Storage and Recovery opportunities;

**WHEREAS**, Watermaster desires to purchase and the Overlying (Non-Agricultural) Pool desires to sell, all of the Non-Agricultural Pool water held in storage as of June 30, 2007;

**WHEREAS**, Watermaster is proposing an amendment to the Overlying (Non-Agricultural) Pool Pooling Plan set forth in Exhibit "G" to the Judgment whereby members of the Pool may offer water for purchase by Watermaster and thence the members of the Appropriate Pool under the process set forth therein;

**NOW THEREFORE**, in consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon the conditions precedent set forth herein, and for other good and valuable consideration, the Parties agree as follows:.

**A. Peace Agreement Transfer.** This purchase and sale agreement is in accordance with Section 5.3(e) of the Peace Agreement that provides that "parties to the Judgment with rights within the Non-Agricultural (Overlying) Pool shall have the additional rights to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program."

**B. Quantity.** The quantity of water being made available to Watermaster by the Non-Agricultural (Overlying) Pool on a one-time basis ("Storage Transfer Quantity") is equivalent to the total quantity of water held in storage by the members of the Overlying (Non-Agricultural) Pool held in storage on June 30, 2007 ("Storage Quantity"), less a ten percent dedication for the purpose of Desalter Replenishment, less the quantity of water transferred pursuant to paragraph I below ("Special Transfer Quantity").

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C. **Notice.** Within twenty-four months of the final Court approval of this Agreement (“Effective Date”), and only with the prior approval of the Appropriative Pool, Watermaster will provide written **Notice of Intent to Purchase** the Non-Agricultural (Overlying) Pool water pursuant to Section 5.3(a) of the Peace Agreement, which therein identifies whether such payment will be in connection with Desalter Replenishment or a Storage and Recovery Program.

D. **Payment.** Commencing thirty (30) calendar days from the Notice of Intent to Purchase (“Payment Date”) Watermaster will pay to the Non-Agricultural Overlying Pool for each acre-foot of the Storage Transfer Quantity in accordance with the following schedule as the schedule is adjusted for inflation by the consumers price index (“cpi”) for San Bernardino County from May 31, 2006 until the Payment Date.:

1. \$215 times 1/4 of the Storage Transfer Quantity on the Payment Date.
2. \$220 times 1/4 of the Storage Transfer Quantity on the first anniversary of the Payment Date.
3. \$225 times 1/4 of the Storage Transfer Quantity on the second anniversary of the Payment Date
4. \$230 time 1/4 of the Storage Transfer Quantity on the third anniversary of the Payment Date.

However, all payments provided for herein, including inflation adjustments, are subject to an express price cap and will not exceed ninety-two (92) percent of the then prevailing MWD replenishment rate in any year.

E. **Dedication to Desalter Replenishment.** Upon Watermaster’s issuance of its written **Notice of Intent to Purchase**, and Watermaster’s tender of its initial payment on the Payment Date, ten (10) percent of the Storage Quantity will be dedicated for replenishment of Desalter production without compensation. Watermaster will receive but will not pay for this dedication.

F. **Use and Distribution.** Watermaster will take possession of the water made available pursuant to this Agreement and make use of and distribute the water made available in a manner consistent with Section 5.3(e) of the Peace Agreement.

G. **Condition Precedent.** This Agreement and the Parties performance hereunder are expressly conditioned upon Court approval of this Agreement.

H. **Early Termination.** This Agreement will expire and be of no further force and effect if: Watermaster does not issue its **Notice of Intent to Purchase** in accordance with Paragraph D above within twenty-four (24) months of Court approval. Upon Watermaster’s failure to satisfy the condition subsequent, the rights of the Non-Agricultural (Overlying) Pool will remain unaffected and without prejudice as result of their having executed this Agreement except that in the event of Early Termination, the Storage Transfer Quantity, will then be made available for purchase by Watermaster and thence the members of the Appropriative Pool in accordance with Paragraph 9.(iv) of Amended Exhibit G, the Overlying (Non-Agricultural) Pool,

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Pooling Plan, including the requirement of a ten percent dedication towards Desalter replenishment.

**I. One Time Transfer in Furtherance of the Physical Solution and in Aid of Desalter Replenishment ("Special Transfer Quantity").** In consideration of the Overlying (Non-Agricultural) Pool members' irrevocable commitment made herein and it the Peace II Measures Watermaster will purchase and immediately make available the quantity of 8,530 acre-feet (less a ten percent dedication to Watermaster for Desalter Production) to the San Antonio Water Company (SAWCO) and Vulcan Materials, a member of the Overlying (Non-Agricultural) Pool under terms established as between those parties. This One Time Transfer is in addition to and without prejudice to the discretionary rights of the members of the Overlying (Non-Agricultural) Pool to make available and Watermaster and members of the Appropriative Pool to purchase water as Physical Solution transfers. No member of the Appropriative Pool, other than SAWCO assumes any responsibility for the purchase of this Special Transfer Quantity from Vulcan.

IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

NON-AGRICULTURAL OVERLYING POOL

By \_\_\_\_\_

# Attachment H



September 21, 2007

**Attachment "H"**

**JUDGMENT AMENDMENT  
to Paragraph 8**

The Paragraph 8 of the Judgment shall be amended to read as follows:

"8. The parties listed in Exhibits "C" and "D" are the owners or in possession of lands which overlie Chino Basin. As such, said parties have exercised overlying water rights in Chino Basin. All overlying rights owned or exercised by parties listed in Exhibits "C" and "D" have, in the aggregate, been limited by prescription except to the extent such rights have been preserved by self-help by said parties. Aggregate preserved overlying rights in the Safe Yield for Agricultural Pool use, including the rights of the State of California, total 82,800 acre-feet per year. Overlying rights for non-agricultural pool use total 7,366 acre-feet per year and are individually decreed for each affected party in Exhibit "D." No portion of the Safe Yield of Chino Basin exists to satisfy unexercised overlying rights and such rights have all been lost by prescription. However, uses may be made of Basin water on overlying lands which have no preserved overlying rights pursuant to the Physical Solution herein. All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom for the term of the Peace Agreement except that the members of the Overlying (Non-Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights: (i) within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; or (iii) in accordance with the Overlying-(Non-Agricultural) Pool Pooling Plan set forth in Exhibit "G."

# Attachment I

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**Attachment "I"**

**JUDGMENT AMENDMENT  
TO EXHIBIT G**

Exhibit G, the Overlying (Non-Agricultural) Pool Pooling Plan will be amended to revise Paragraph 5 to read as follows:

**"5. Assessments.**

(a) Replenishment Assessments. Each member of this Pool shall pay an assessment equal to the cost of replenishment water times the number of acre feet of production by such producer during the preceding year in excess of (a) his decreed share of the Safe Yield, plus (b) any carry-over credit under Paragraph 7 hereof.

(b) Administrative Assessments. In addition, the cost of the allocated share of Watermaster administration expense shall be recovered on an equal assessment against each acre-foot of production in the pool during such preceding fiscal year or calendar quarter; and in the case of Pool members who take substitute groundwater as set forth in Paragraph 8 hereof, such producer shall be liable for its share of administration assessment, as if the water so taken were produced, up to the limit of its decreed share of Safe Yield.

(c) Special Project OBMP Assessment. Each year, every member of this Pool will dedicate ten (10) percent of their annual share of Operating Safe Yield to Watermaster or in lieu thereof Watermaster will levy a Special Project OBMP Assessment in an amount equal to ten percent of the Pool member's respective share of Safe Yield times the then-prevailing MWD Replenishment Rate.

And to renumber Paragraph 9 as Paragraph 10 and add Paragraph 9 to read as follows:

**"9. Physical Solution Transfers.** All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom except that for the term of the Peace Agreement the members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution: (i) within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; (iii) in conformance with the procedures described in Paragraph I of the Purchase and Sale Agreement for the Purchase of Water by Watermaster from Overlying (Non-Agricultural Pool dated June 30, 2007; or (iv) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines and those procedures Watermaster may further provide in Watermaster's Rules and Regulations:

(a) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. By January 31 of each year,

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Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;

(b) Except as they may be limited by paragraph 9(e) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price established in 9(d) below. Each Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

(c) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9(b) above and at the price established in Paragraph 9(d) below. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.

(d) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (b) and (c) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at 92% of the then-prevailing "MWD Replenishment Rate" and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.

(e) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.

(f) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.

(g) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9(a)-(c) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.

(h) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6 above, or to affect the rights of any Party under a valid assignment."

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**Attachment "I-1"**  
**Map Re-Operation**

SB 441272 v2:008350.0001

# Attachment J

September 21, 2007

Attachment "J"

JUDGMENT AMENDMENT  
to Exhibit I

Exhibit "I" "ENGINEERING APPENDIX" is amended to read as follows:

1. **Basin Management Parameters.** In the process of implementing the physical solution, Watermaster shall consider the following parameters:

(a) **Pumping Patterns.** Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized recharge of replenishment water, insofar as such result may be practically avoided.

(b) **Water Quality.** Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.

(c) **Economic Considerations.** Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters.

2. **Hydraulic Control and Re-Operation.** In accordance with the purpose and objective of the Physical Solution to "establish a legal and practical means for making the maximum reasonable beneficial use of the waters of the Chino Basin" (paragraph 39) including but not limited to the use and recapture of reclaimed water (paragraph 49(a) ) and the identified Basin Management Parameters set forth above, Watermaster will manage the Basin to secure and maintain Hydraulic Control through controlled overdraft.

(a) **Hydraulic Control.** "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is more fully described and set forth in Attachment I-1 to this Engineering Appendix. By obtaining Hydraulic Control, Watermaster will ensure that the water management activities in the Chino North Management Zone do not cause materially adverse impacts to the beneficial uses of the Santa Ana River downstream of Prado Dam.

(b) **Re-Operation.** "Re-Operation" means the controlled overdraft of the Basin by the managed withdrawal of groundwater for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 acre-feet authorized by paragraph 3 below, to 600,000 acre feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution.

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[1] The increase in the controlled overdraft herein is separate from and in addition to the 200,000 acre-feet of accumulated overdraft authorized in paragraph 3(a) and 3(b) below over the period of 1978 through 2017.

[2] "Desalters" means the Chino I Desalter, the Chino I Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin water, including extraction wells and transmission facilities for delivery of groundwater to the Desalter. Desalter treatment and delivery facilities for the desalted water include pumping and storage facilities and treatment and disposal capacity in the Santa Ana Regional Interceptor.

[3] The groundwater Produced through controlled overdraft pursuant to Re-Operation does not constitute New Yield or Operating Safe Yield and it is made available under the Physical Solution for the express purpose of satisfying some or all of the groundwater Production by the Desalters until December 31, 2030. ("Period of Re-Operation").

[4] The operation of the Desalters, the Production of groundwater for the Desalters and the use of water produced by the Desalters pursuant to Re-Operation are subject to the limitations that may be set forth in Watermaster Rules and Regulations for the Desalters.

(5) Watermaster will update its Recharge Master Plan and obtain Court approval of its update, to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan shall contain recharge projections and summaries of the projected water supply availability as well as the physical means to accomplish recharge projections. The Recharge Master Plan may be amended from time to time with Court approval.

(6) Re-Operation and Watermaster's apportionment of controlled overdraft in accordance with the Physical Solution will not be suspended in the event that Hydraulic Control is secured in any year *before* the full 400,000 acre-feet has been Produced without Replenishment, so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures that will avoid unreasonable and unmitigated material physical harm to a party or to the Basin and that equitably distributes the cost of any mitigation attributable to the identified contingencies; and (ii) Watermaster is in substantial compliance with a Court approved Recharge Master Plan.

3 **Operating Safe Yield.** Operating Safe Yield in any year shall consist of the Appropriative Pool's share of Safe Yield of the Basin, plus any accumulated overdraft of the Basin which Watermaster may authorize under 3(a) and 3(b) below. In adopting the Operating Safe Yield for any year, Watermaster shall be limited as follows:



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(a) Accumulated Overdraft. During this Judgment and Physical Solution, the overdraft accumulated from 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.

(b) Quantitative Limits. In no event shall Operating Safe Yield in any year be less than the Appropriative Pool's share of Safe Yield, nor shall it exceed such share of Safe Yield by more than 10,000 acre-feet. The Initial Operating Safe Yield is hereby set at 54,834 acre-feet per year. Operating Safe Yield shall not be changed upon less than five (5) years' notice by Watermaster.

Nothing contained in this paragraph shall be deemed to authorize directly or indirectly, any modification of the allocation of shares in Safe Yield to the overlying pools, as set forth in Paragraph 44 of the Judgment.

**4. Groundwater Storage Agreements.** Any agreements authorized by Watermaster for Storage of supplemental water in the available groundwater storage capacity of Chino Basin shall include, but not be limited to:

- (a) The quantities and term of the storage right.
- (b) A statement of the priority or relations of said right, as against overlying or Safe Yield uses, and other storage rights.
- (c) The procedure for establishing delivery rates, schedules and procedures which may include:
  - [1] spreading or injection, or
  - [2] in lieu deliveries of supplemental water for direct use.
- (d) The procedures for calculation of losses and annual accounting for water in storage by Watermaster.
- (e) The procedures for establishment and administration of withdrawal schedules, locations and methods.

# Attachment K

October 25, 2007

**PEACE II AGREEMENT:  
PARTY SUPPORT FOR WATERMASTER'S OBMP  
IMPLEMENTATION PLAN, –  
SETTLEMENT AND RELEASE OF CLAIMS  
REGARDING FUTURE DESALTERS**

**WHEREAS**, paragraph 41 of the Judgment entered in *Chino Basin Municipal Water District v. City of Chino* (San Bernardino Superior Court Case No. 51010) grants Watermaster, with the advice of the Advisory and Pool Committees, "discretionary powers in order to implement an Optimum Basin Management Program ("OBMP") for the Chino Basin";

**WHEREAS**, the Parties to the Judgment executed an agreement resolving their differences and pledging their support for Watermaster actions in accordance with specific terms in June of 2000 ("Peace Agreement");

**WHEREAS**, Watermaster approved Resolution 00-05, and thereby adopted the goals and objectives of the OBMP, the OBMP Implementation Plan and committed to act in accordance with the terms of the Peace Agreement;

**WHEREAS**, pursuant to Article IV, paragraph 4.2, each of the parties to the Peace Agreement agreed not to oppose Watermaster's adoption and implementation of the OBMP Implementation Plan attached as Exhibit "B" to the Peace Agreement;

**WHEREAS**, the Peace Agreement, the OBMP Implementation Plan and the Chino Basin Watermaster Rules and Regulations contemplate further actions by Watermaster in furtherance of its responsibilities under paragraph 41 of the Judgment and in accordance with the Peace Agreement and the OBMP Implementation Plan;

**WHEREAS**, the Parties to the Peace Agreement made certain commitments regarding the funding, design, construction and operation of Future Desalters;

**WHEREAS**, after receiving input from its stakeholders in the form of the Stakeholder's Non-Binding Term Sheet, Watermaster has proposed to adopt Resolution 07-05 attached as Exhibit "1" hereto to further implement the OBMP through a suite of measures commonly referred to and herein defined as "Peace II Measures", including but not limited to the 2007 Supplement to the OBMP, the Second Amendment to the Peace Agreement, amendments to Watermaster's Rules and Regulations, the purchase and sale of water within the Overlying (Non-Agricultural) Pool and certain Judgment amendments; and

**NOW, THEREFORE**, in consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon the conditions precedent set forth in Article III herein, the Watermaster Approval, and Court Order, and for other good and valuable consideration, the Parties agree as follows:

**ARTICLE I**  
**DEFINITIONS AND RULES OF CONSTRUCTION**

1.1 Definitions.

- (a) "Desalters" means Desalters and Future Desalters collectively, as defined in the Peace Agreement.
- (b) "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is defined in the 2004 Basin Plan amendment (RWQCB resolution R8-2004-001) attached hereto as Exhibit "B."
- (c) "Leave Behind" means a contribution to the Basin from water held in storage within the Basin under a Storage and Recovery Agreement that may be established by Watermaster from time to time that may reflect any or all of the following: (i) actual losses; (ii) equitable considerations associated with Watermaster's management of storage agreements; and (iii) protection of the long-term health of the Basin against the cumulative impacts of simultaneous recovery of groundwater under all storage agreements.
- (d) "Re-Operation" means the controlled overdraft of the Basin by the managed withdrawal of groundwater Production for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 authorized by paragraph 3 of the Engineering Appendix Exhibit I to the Judgment, to 600,000 acre feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution.
- (e) Unless otherwise expressly provided herein, all definitions set forth in the Peace Agreement and the Judgment are applicable to the terms as they are used herein.

1.2 Rules of Construction.

- (a) Unless the context clearly requires otherwise:
  - (i) The plural and singular forms include the other;
  - (ii) "Shall," "will," "must," and "agrees" are each mandatory;
  - (iii) "May" is permissive;
  - (iv) "Or" is not exclusive;
  - (v) "Includes" and "including" are not limiting; and
  - (vi) "Between" includes the ends of the identified range.

- (b) Headings at the beginning of Articles, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it.
- (c) The masculine gender shall include the feminine and neuter genders and vice versa.
- (d) The word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature.
- (e) Reference to any agreement (including this Agreement), document, or instrument means such agreement, document, instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms thereof.
- (f) Except as specifically provided herein, reference to any law, statute or ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder.

## **ARTICLE II**

### **COMPLIANCE WITH CEQA**

- 2.1 Project Description. The proposed project description regarding the design, permitting, construction and operation of Future Desalter, securing Hydraulic Control through Basin Re-Operation is set forth in Attachment "A" to Watermaster Resolution 07-05 attached hereto as Exhibit "1."
- 2.2 Acknowledgment of IEUA as the Lead Agency for CEQA Review. IEUA has been properly designated as the "Lead Agency" for the purposes of completing environmental assessment and review of the proposed project.
- 2.3 Commitments are Consistent with CEQA. The Parties agree and acknowledge that no commitment will be made to carry out any "project" under the amendments to the OBMP and within the meaning of CEQA unless and until the environmental review and assessment that may be required by CEQA for that defined "project" have been completed.
- 2.4 Reservation of Discretion. Execution of this Agreement is not intended to commit any Party to undertake a project without compliance with CEQA or to commit the Parties individually or collectively to any specific course of action, which would result in the present approval of a future project.
- 2.5 No Prejudice by Comment or Failure to Comment. Nothing contained in environmental review of the Project, or a Party's failure to object or comment thereon, shall limit any

Party's right to allege that "Material Physical Injury" will result or has resulted from the implementation of the OBMP or its amendment.

**ARTICLE III**  
**CONDITIONS PRECEDENT**

- 3.1 Performance Under Articles IV-XII is Subject to Satisfaction of the Conditions Precedent. Each Party's obligations under this Agreement are subject to the satisfaction of the following conditions precedent on or before the dates specified below, unless satisfaction or a specified condition or conditions is waived in writing by all other Parties:
- (a) Watermaster approval of Resolution 07-05 in a form attached hereto as Exhibit "1," including the following Attachments thereto
    - (i) the amendments to the Chino Basin Watermaster Rules and Regulations set forth in Attachment "F" thereto.
    - (ii) the 2007 Supplement to the OBMP Implementation Plan set forth in Attachment "D" thereto.
    - (iii) the amendments to the Judgment set forth in Attachments "H, I, and J" thereto.
    - (iv) the Second Amendment to the Peace Agreement set forth in Attachment "L" thereto.
    - (v) the Purchase and Sale Agreement for the Purchase of Water by Watermaster From the Overlying (Non-Agricultural) Pool as set forth in Attachment G thereto.
  - (b) The execution of the proposed Second Amendment to the Peace Agreement by all Parties to the Peace Agreement .
  - (c) Court approval of the proposed Judgment Amendments and a further order of the Court directing Watermaster to proceed in accordance with the terms of the Peace II Measures as embodied in Resolution 07-05.

**ARTICLE IV**  
**MUTUAL ACKNOWLEDGEMENT AND COVENANTS**

- 4.1 Acknowledgment of Peace II Measures. The collective actions of Watermaster set forth in Watermaster Resolution 07-05 and the Attachments thereto (Peace II Measures) constitute further actions by Watermaster in implementing the OBMP in accordance with the grant and limitations on its discretionary authority set forth under paragraph 41 of the Judgment
- 4.2 Non-Opposition. No Party to this Agreement shall oppose Watermaster's adoption of Resolution 07-05 and implementation of the Peace II measures as embodied therein



including the Judgment Amendments, Amendments to the Peace Agreement, the 2007 Supplement to the OBMP Implementation Plan and Amendments to the Chino Basin Watermaster's Rules and Regulations or to Watermaster's execution of memoranda of agreement that are not materially inconsistent with the terms contained therein. Notwithstanding this covenant, no party shall be limited in their right of participation in all functions of Watermaster as they are provided in the Judgment or to preclude a Party to the Judgment from seeking judicial review of Watermaster determinations pursuant to the Judgment or as otherwise provided in this Agreement.

- 4.3 Consent to Amendments. Each Party expressly consents to the Judgment amendments and modifications set forth in Watermaster's Resolution 07-05.
- 4.4 Non-Agricultural Pool Intervention. The Parties acknowledge and agree that any Party to the Judgment shall have the right to purchase Non-Agricultural overlying property within the Basin and appurtenant water rights and to intervene in the Non-Agricultural Pool.

#### **ARTICLE V** **FUTURE DESALTERS**

- 5.1 Purpose. Watermaster plans to coordinate and the Parties to the Judgment plan to arrange for the physical capacity and potable water use of water from the Desalters. Desalters in existence on the effective date of this Agreement will be supplemented to provide the required capacity to cumulatively produce approximately 40,000 acre-feet per year of groundwater from the Desalters by 2012.
- 5.2 2007 Supplement to the OBMP Implementation Plan. The OBMP Implementation Plan will be supplemented as set forth in the 2007 Supplement to the OBMP Implementation Plan to reflect that Western Municipal Water District ("WMWD"), acting independently or in its complete discretion with the City of Ontario ("Ontario") or the Jurupa Community Services District ("Jurupa") or both, will exercise good faith and reasonable best efforts to arrange for the design, planning, and construction of Future Desalters in accordance with the 2007 Supplement to the OBMP Implementation Plan, to obtain Hydraulic Control, further Re-Operation and support the Future Desalters.
- 5.3 Implementation. WMWD, acting independently or in its complete discretion with Ontario, Jurupa, or both, will exercise good faith and reasonable best efforts to arrange for the design, planning, and construction of Future Desalters in accordance with the 2007 Supplement to the OBMP Implementation Plan, to account for Hydraulic Control, Re-Operation and Future Desalters.
- (a) WMWD, acting independently or in its complete discretion with Ontario or Jurupa or both, will exercise good faith and reasonable best efforts to proceed in accordance with the timeline for the completion of design, permitting, finance and construction as attached hereto as Exhibit "2"
- (b) WMWD, acting independently or in its complete discretion with the City of Ontario or the Jurupa Community Services District or both, will provide quarterly progress reports to Watermaster and the Court.

- 5.4 Project Description. The Future Desalters will add up to 9 mgd to existing Desalters. This will include production capacity from new groundwater wells that will be located in the Southerly end of the Basin, as depicted in Exhibit "3" attached hereto and incorporated herein by this reference. The final design and construction of Future Desalters *may* depend on the terms and conditions that may be freely arrived at by fair bargaining among WMWD and the Chino Basin Desalter Authority ("CDA") or whether it is required to build stand-alone facilities or both. There are material yield benefits to the Parties to the Judgment that are achieved by obtaining Hydraulic Control through Basin Re-Operation. The extent of these benefits is somewhat dependent upon the final location of new production facilities within the southerly end of the Basin. Accordingly, Watermaster will ensure that the location of Future Desalter groundwater production facilities will achieve both Hydraulic Control and maximize yield enhancement by their location emphasizing groundwater production from the Southerly end of the Basin.
- 5.5 Implementing Agreements. Within twenty-four (24) months of the effective date, WMWD, acting independently or in its complete discretion with the City of Ontario or the Jurupa Community Services District or both, will exercise good faith and reasonable best efforts to complete final binding agreement(s) regarding Future Desalters that includes the following key terms:
- (a) Arrangements for WMWD's purchase of product water from CDA;
  - (b) Arrangements with CDA, Jurupa and other Chino Basin parties for the common use of existing facilities, if any;
  - (c) Arrangement with the owners of the SARI line;
  - (d) Arrangements with the Appropriative Pool regarding the apportionment of any groundwater produced as controlled overdraft in accordance with the Physical Solution between Desalters I, Desalters II on the one hand and the Future Desalters on the other hand;
  - (e) WMWD's payment to Watermaster to reimburse Parties to the Judgment for their historical contributions towards the OBMP, if any;
  - (f) The schedule for approvals and project completion.
- 5.6 Reservation of Discretion. Nothing herein shall be construed as committing WMWD, or any members of CDA to take any specific action(s) to accommodate the needs or requests of the other, Watermaster, or any Party to the Judgment, whatever the request may be.
- 5.7 Condition Subsequent. WMWD's obligation to execute a binding purchase agreement with CDA or to independently develop the Future Desalters is subject to the express condition subsequent that the total price per acre-foot of water delivered must not be projected to exceed the sum of the following: (i) the full MWD Tier II Rate; (ii) the MWD Treatment Surcharge calculated in terms of an annual average acre-foot charge; and (iii) \$150 (in 2006 dollars) per acre-foot of water delivered to account for water supply reliability.



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- (a) The full acre-foot cost to Western for Capital and O&M (assuming the priority allocation of controlled overdraft), includes:
  - (i) the delivery of the desalted water to its Mockingbird Reservoir or directly to the City of Norco,
  - (ii) any applicable ongoing Watermaster assessments, payments to CDA and JCSD and for SARI utilization.
- (b) Provided that if third-party funding, grants and a MWD subsidy under the Local Resources Program or otherwise should reduce Western's costs to an amount which is \$75 (in 2006 dollars) below the cap described in paragraph 5.5, Western will transmit an amount equal to fifty (50) percent of the amount less than the computed price cap less \$75 (in 2006 dollars) to Watermaster.
- (c) Western may elect to exercise its right of withdrawal under this paragraph 5.7 within 120 days following the later of: (1) completion of preliminary design; or (2) the certification of whatever CEQA document is prepared for the project, but not later than sixty (60) days thereafter and in no event after a binding water purchase agreement has been executed.

5.8 Limitations. The operation of the Future Desalters will be subject to the following limitations:

- (a) Well Location. New groundwater production facilities for the Future Desalters will be located in the southern end of the Basin to achieve the dual purpose of obtaining Hydraulic Control and increasing Basin yield.
  - (i) New wells will be constructed in the shallow aquifer system among Desalter I wells No. 1 through 4 and west of Desalter I.
  - (ii) So long as these wells produce at least one-half of the Future Desalter groundwater, the Future Desalters shall be entitled to first priority for the allocation of the 400,000 acre-feet of controlled overdraft authorized by the Judgment Amendments to Exhibit I.
- (b) Export. The export of groundwater from the Basin must be minimized. WMWD will present a plan for export minimization to the Watermaster for review and approval prior to operation of the Future Desalters.
  - (i) Watermaster will account for water imported and exported by WMWD.
  - (ii) Watermaster will prepare an initial reconciliation of WMWD's imports and exports at the end of the first ten (10) years of operation and every year thereafter to determine whether a "net export" occurred.

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- (iii) WMWD will pay an assessment, if any, on all "net exports" in accordance with Judgment Exhibit "H," paragraph 7(b) after the initial reconciliation is completed at the end of the first ten (10) years of operation.

**ARTICLE VI**  
**GROUNDWATER PRODUCTION BY AND**  
**REPLENISHMENT FOR DESALTERS**

- 6.1 Acknowledgment. The Parties acknowledge that the hierarchy for providing Replenishment Water for the Desalters is set forth in Article VII, paragraph 7.5 of the Peace Agreement, and that this section controls the sources of water that will be offered to offset Desalter Production.
- 6.2 Peace II Desalter Production Offsets. To facilitate Hydraulic Control through Basin Re-Operation, in accordance with the 2007 Supplement to the OBMP Implementation Plan and the amended Exhibits G and I to the Judgment, additional sources of water will be made available for purposes of Desalter Production and thereby some or all of a Replenishment obligation. With these available sources, the Replenishment obligation attributable to Desalter production in any year will be determined by Watermaster as follows:
- (a) Watermaster will calculate the total Desalter Production for the preceding year and then apply a credit against the total quantity from:
    - (i) the Kaiser account (Peace Agreement Section 7.5(a).);
    - (ii) dedication of water from the Overlying (Non-Agricultural) Pool Storage Account or from any contribution arising from an annual authorized Physical Solution Transfer in accordance with amended Exhibit G to the Judgment;
    - (iii) New Yield (other than Stormwater (Peace Agreement Section 7.5(b)));
    - (iv) any declared losses from storage in excess of actual losses enforced as a "Leave Behind";
    - (v) Safe Yield that may be contributed by the parties (Peace Agreement Section 7.5(c));
    - (vi) any Production of groundwater attributable to the controlled overdraft authorized pursuant to amended Exhibit I to the Judgment.
  - (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(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) A Replenishment Assessment against the Appropriative Pool, 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. 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.
  - (iii) The quantification of any Party's share of Operating Safe Yield does not include the result of any land use conversions.
- (c) The rights and obligations of the parties, whatever they may be, regarding Replenishment Assessments attributable to all Desalters and Future Desalters in any renewal term of the Peace Agreement are expressly reserved and not altered by this Agreement.

## **ARTICLE VII**

### **YIELD ACCOUNTING**

- 7.1 New Yield Attributable to Desalters. Watermaster will make an annual finding as to the quantity of New Yield that is made available by Basin Re-Operation including that portion that is specifically attributable to the Existing and Future Desalters. Any subsequent recalculation of New Yield as Safe Yield by Watermaster will not change the priorities set forth above for offsetting Desalter production as set forth in Article VII, Section 7.5 of the Peace Agreement. For the initial term of the Peace Agreement, neither Watermaster nor the Parties will request that Safe Yield be recalculated in a manner that incorporates New Yield *attributable to the Desalters* into the determination of Safe Yield so that this source of supply will be available for Desalter Production rather than for use by individual parties to the Judgment.
- 7.2 Apportionment of Controlled Overdraft. Within twelve (12) months of the court approval and no later than December 1, 2008, with facilitation by Watermaster, WMWD and the Appropriative Pool will establish by mutual agreement the portion of the 400,000 acre-feet of the controlled overdraft authorized by the amendment to Exhibit "T" to the Judgment that will be allocated among the Desalters and pursuant to a proposed schedule.

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- (a) To the extent the groundwater wells for the Future Desalters pump at least fifty (50) percent groundwater from the southern end of the Basin as set forth in Exhibit "3" the *Future Desalters* will be entitled to first priority to the controlled overdraft authorized by the amendment to Exhibit "I" to the Judgment.
- (b) WMWD and the Appropriative Pool will exercise good faith and reasonable best efforts to arrive at a fair apportionment. Relevant considerations in establishing the apportionment include, but are not limited to: (i) the nexus between the proposed expansion and achieving Hydraulic Control;(ii) the nexus between the project and obtaining increased yield; (iii) the identified capital costs; (iv) operating and maintenance expenses; and (iv) the availability of third-party funding.
- (c) The parties will present any proposed agreement regarding apportionment to Watermaster. Watermaster will provide due regard to any agreement between WMWD and the Appropriative Pool and approve it so long as the proposal phases the Re-Operation over a reasonable period of time to secure the physical condition of Hydraulic Control and will achieve the identified yield benefits while at the same time avoiding Material Physical Injury or an inefficient use of basin resources.
- (d) If WMWD and the Appropriative Pool do not reach agreement on apportionment of controlled overdraft to Future Desalters, then no later than August 31, 2009, the members of the Appropriative Pool will submit a plan to Watermaster that achieves the identified goals of increasing the physical capacity of the Desalters and potable water use of approximately 40,000 acre-feet of groundwater production from the Desalters from the Basin no later than 2012. The Appropriative Pool proposal must demonstrate how it has provided first priority to the Future Desalters if the conditions of paragraph 7.2(a) are met.
- (e) Watermaster will have discretion to apportion the controlled overdraft under a schedule that reflects the needs of the parties and the need for economic certainty and the factors set forth in Paragraph 7.2(a) above. Watermaster may exercise its discretion to establish a schedule for Basin Re-Operation that best meets the needs of the Parties to the Judgment and the physical conditions of the Basin, including but not limited to such methods as "ramping up," "ramping down," or "straight-lining."
  - (i) An initial schedule will be approved by Watermaster and submitted to the Court concurrent with Watermaster Resolution 07-05.
  - (ii) Watermaster may approve and request Court approval of revisions to the initial schedule if Watermaster's approval and request are supported by a technical report demonstrating the continued need for access to controlled overdraft, subject to the limitations set forth in amended Exhibit "I" to the Judgment and the justification for the amendment.



7.3 Suspension. An evaluation of Watermaster's achievement of Basin outflow conditions, achievement of Hydraulic Control and compliance with Regional Board orders will be completed annually by Watermaster. Re-Operation and Watermaster's apportionment of controlled overdraft will not be suspended in the event that Hydraulic Control is secured in any year *before* the full 400,000 acre-feet has been produced so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures to avoid Material Physical Injury and that equitably distributes the cost of any mitigation attributable to the identified contingencies, and (ii) Watermaster is in substantial compliance with a Court approved Recharge Master Plan as set forth in Paragraph 8.1 below.

7.4 Storage: Uniform Losses. The Parties acknowledge that Watermaster has assessed a two (2)-percent loss on all groundwater presently held in storage to reflect the current hydrologic condition. As provided in the Peace Agreement, Watermaster will continue to maintain a minimum 2 (two) percent loss until substantial evidence exists to warrant the imposition of another loss factor. However, the Parties further acknowledge and agree that losses have been substantially reduced through the OBMP Implementation Plan and the operation of Desalters I and II and that once Hydraulic Control is achieved outflow and losses from the Basin will have been limited to *de minimis* quantities. Therefore, Watermaster may establish uniform losses for all water held in storage based on whether the Party has substantially contributed to Watermaster reducing losses and ultimately securing and maintaining Hydraulic Control.

(a) Pre-Implementation of the Peace Agreement. The uniform annual loss (leave behind) of six (6) percent will be applied to all storage accounts to address actual losses, management and equitable considerations arising from the implementation of the Peace Agreement, the OBMP Implementation Plan, the 2007 Supplement to the OBMP Implementation Plan, including but not limited to the Desalters and Hydraulic Control unless the Party holding the storage account: (i) has previously contributed to the implementation of the OBMP as a Party to the Judgment, is in compliance with their continuing covenants under the Peace Agreement or in lieu thereof they have paid or delivered to Watermaster "financial equivalent" consideration to offset the cost of past performance prior to the implementation of the OBMP and (ii) promised continued future compliance with Watermaster Rules and Regulations. In the event that a Party satisfies 7.4(a)(i) and 7.4(a)(ii) they will be assessed a minimum loss of two (2) percent against all water held in storage to reflect actual estimated losses. Watermaster's evaluation of the sufficiency of any consideration or financial equivalency may take into account the fact that one or more Parties to the Judgment are not similarly situated.

(b) Post-Hydraulic Control. Following Watermaster's determination that it has achieved Hydraulic Control and for so long as Watermaster continues to sustain losses from the Basin to the Santa Ana River at a *de minimis* level (less than one (1) percent), any Party to the Judgment (agency, entity or person) may qualify for the Post-Hydraulic Control uniform loss percentage of less than 1 percent if they meet the criteria of 7.4(a)(i) and 7.4(a)(ii) above.

- 7.5 Allocation of Losses. Any losses from storage assessed as a Leave Behind in excess of actual losses ("dedication quantity") will be dedicated by Watermaster towards groundwater Production by the Desalters to thereby avoid a Desalter replenishment obligation that may then exist *in the year* of recovery. Any dedication quantity which is not required to offset Desalter Production in the year in which the loss is assessed, will be made available to the members of the Appropriative Pool. The dedication quantity will be pro-rated among the members of the Appropriative Pool in accordance with each Producer's combined total share of Operating Safe Yield and the previous year's actual production. However, before any member of the Appropriative Pool may receive a distribution of any dedication quantity, they must be in full compliance with the 2007 Supplement to the OBMP Implementation Plan and current in all applicable Watermaster assessments.

### **ARTICLE VIII** **RECHARGE**

- 8.1 Update to the Recharge Master Plan. Watermaster will update and obtain Court approval of its update to the Recharge Master Plan to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and subsequently operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan will be jointly approved by IEUA and Watermaster and shall contain recharge estimations and summaries of the projected water supply availability as well as the physical means to accomplish the recharge projections. Specifically, the Plan will reflect an appropriate schedule for planning, design, and physical improvements as may be required to provide reasonable assurance that following the full beneficial use of the groundwater withdrawn in accordance with the Basin Re-Operation and authorized controlled overdraft, that sufficient Replenishment capability exists to meet the reasonable projections of Desalter Replenishment obligations. With the concurrence of IEUA and Watermaster, the Recharge Master Plan will be updated and amended as frequently as necessary with Court approval and not less than every five (5) years. Costs incurred in the design, permitting, operation and maintenance of recharge improvements will be apportioned in accordance with the following principles.
- a. Operations and Maintenance. All future operations and maintenance costs attributable to all recharge facilities utilized for recharge of recycled water in whole or in part unfunded from third party sources, will be paid by the Inland Empire Utilities Agency ("IEUA") and Watermaster. The contribution by IEUA will be determined annually on the basis of the relative proportion of recycled water recharged bears to the total recharge from all sources in the prior year. For example, if 35 percent of total recharge in a single year is from recycled water, then IEUA will bear 35 percent of the operations and maintenance costs. All remaining unfunded costs attributable to the facilities used by Watermaster will be paid by Watermaster.
- i. IEUA reserves discretion as to how it assesses its share of costs.

ii. Watermaster will apportion its costs among the members of the stakeholders in accordance with Production, excluding Desalter Production.

iii. The operations and maintenance costs of water recharged by aquifer storage and recovery will not be considered in the calculation other than by express agreement.

b. Capital. Mutually approved capital improvements for recharge basins that do or can receive recycled water constructed pursuant to the Court approved Recharge Master Plan, if any, will be financed through the use of third party grants and contributions if available, with any unfunded balance being apportioned 50 percent each to IEUA and Watermaster. The Watermaster contribution shall be allocated according to shares of Operating Safe Yield. All remaining unfunded costs attributable to the facilities used by Watermaster will be paid by Watermaster.

8.2 Coordination. The members of the Appropriative Pool will coordinate the development of their respective Urban Water Management Plans and Water Supply Master Plans with Watermaster as follows.

- (a) Each Appropriator that prepares an Urban Water Management Plan and Water Supply Plans will provide Watermaster with copies of their existing and proposed plans.
- (b) Watermaster will use the Plans in evaluating the adequacy of the Recharge Master Plan and other OBMP Implementation Plan program elements.
- (c) Each Appropriator will provide Watermaster with a draft in advance of adopting any proposed changes to their Urban Water Management Plans and in advance of adopting any material changes to their Water Supply Master Plans respectively in accordance with the customary notification routinely provided to other third parties to offer Watermaster a reasonable opportunity to provide informal input and informal comment on the proposed changes.
- (d) Any party that experiences the loss or the imminent threatened loss of a material water supply source will provide reasonable notice to Watermaster of the condition and the expected impact, if any, on the projected groundwater use.

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

8.4 Acknowledgment re 6,500 Acre-Foot Supplemental Recharge. The Parties make the following acknowledgments regarding the 6,500 Acre-Foot Supplemental Recharge:

- (a) A fundamental premise of the Physical Solution is that all water users dependent upon Chino Basin will be allowed to pump sufficient waters from the Basin to meet their requirements. To promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin, Watermaster has committed to use its best efforts to direct recharge relative to production in each area and sub-area of the Basin and to achieve long-term balance between total recharge and discharge. The Parties acknowledge that to assist Watermaster in providing for recharge, the Peace Agreement sets forth a requirement for Appropriative Pool purchase of 6,500 acre-feet per year of Supplemental Water for recharge in Management Zone 1 (MZ1). The purchases have been credited as an addition to Appropriative Pool storage accounts. The water recharged under this program has not been accounted for as Replenishment water.
- (b) Watermaster was required to evaluate the continuance of this requirement in 2005 by taking into account provisions of the Judgment, Peace Agreement and OBMP, among all other relevant factors. It has been determined that other obligations in the Judgment and Peace Agreement, including the requirement of hydrologic balance and projected replenishment obligations, will provide for sufficient wet-water recharge to make the separate commitment of Appropriative Pool purchase of 6,500 acre-feet unnecessary. Therefore, because the recharge target as described in the Peace Agreement has been achieved, further purchases under the program will cease and Watermaster will proceed with operations in accordance with the provisions of paragraphs (c), (d) and (e) below.
- (c) The parties acknowledge that, regardless of Replenishment obligations, Watermaster will independently determine whether to require wet-water recharge within MZ1 to maintain hydrologic balance and to provide equal access to groundwater in accordance with the provisions of this Section 8.4 and in a manner consistent with the Peace Agreement, OBMP and the Long Term Plan for Subsidence." Watermaster will conduct its recharge in a manner to provide hydrologic balance within, and will emphasize recharge in MZ1. Accordingly, the Parties acknowledge and agree that each year Watermaster shall continue to be guided in the exercise of its discretion concerning recharge by the principles of hydrologic balance.
- (d) Consistent with its overall obligations to manage the Chino Basin to ensure hydrologic balance within each management zone, for the duration of the Peace Agreement (until June of 2030), Watermaster will ensure that a minimum of 6,500 acre-feet of wet water recharge occurs within MZ1 on an annual basis. However, to the extent that water is unavailable for recharge or there is no replenishment obligation in any year, the obligation to recharge 6,500 acre-feet will accrue and be satisfied in subsequent years.
  - (1) Watermaster will implement this measure in a coordinated manner so as to



facilitate compliance with other agreements among the parties, including but not limited to the Dry-Year Yield Agreements.

- (2) In preparation of the Recharge Master Plan, Watermaster will consider whether existing groundwater production facilities owned or controlled by producers within MZ1 may be used in connection with an aquifer storage and recovery ("ASR") project so as to further enhance recharge in specific locations and to otherwise meet the objectives of the Recharge Master Plan.
- (e) Five years from the effective date of the Peace II Measures, Watermaster will cause an evaluation of the minimum recharge quantity for MZ1. After consideration of the information developed in accordance with the studies conducted pursuant to paragraph 3 below, the observed experiences in complying with the Dry Year Yield Agreements as well as any other pertinent information, Watermaster may increase the minimum requirement for MZ1 to quantities greater than 6,500 acre-feet per year. In no circumstance will the commitment to recharge 6,500 acre-feet be reduced for the duration of the Peace Agreement.

#### ARTICLE IX

9.1 Basin Management Assistance. Three Valleys Municipal Water District ("TVMWD") shall assist in the management of the Basin through a financial contribution of \$300,000 to study the feasibility of developing a water supply program within Management Zone 1 of the Basin or in connection with the evaluation of Future Desalters. The study will emphasize assisting Watermaster in meeting its OBMP Implementation Plan objectives of concurrently securing Hydraulic Control through Re-Operation while attaining Management Zone 1 subsidence management goals. Further, TVMWD has expressed an interest in participating in future projects in the Basin that benefit TVMWD. If TVMWD wishes to construct or participate in such future projects, TVMWD shall negotiate with Watermaster in good faith concerning a possible "buy-in" payment.

9.2 Allocation of Non-Agricultural Pool OBMP Special Assessment

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(c) of Exhibit G to the Judgment (as amended) will be apportioned among the members of the Appropriate Pool in each year as follows:

(i)	City of Ontario.	80 af
(ii)	City of Upland	161 af
(iii)	Monte Vista Water District	213 af
(iv)	City of Pomona	220 af
(v)	Marygold Mutual Water Co	16 af
(vi)	West Valley Water District	15 af

b. In the eleventh year from the effective date of the Peace II Measures and in each year thereafter in which water may be available from the Overlying (Non-Agricultural) Pool in excess of identified Desalter replenishment obligations as determined in accordance with Section 6.2 above, any excess water (or financial equivalent) will be distributed pro rata among the members of the Appropriative Pool based upon each Producer's combined total share of Operating Safe Yield and the previous year's actual production.

**ARTICLE X**  
**SETTLEMENT AND RELEASE**

- 10.1 Settlement. By its execution of this Agreement, the Parties mutually and irrevocably, fully settle their respective claims, rights and obligations, whatever they may be, regarding the design, funding, construction and operation of Future Desalters as set forth in and arising from Article VII of the Peace Agreement.
- 10.2 Satisfaction of Peace Agreement Obligation Regarding Future Desalters. The Parties' individual and collective responsibilities arising from the Part VII of the Peace Agreement and the OBMP Implementation Plan regarding the planning, design, permitting, construction and operation of Future Desalters, whatever they may be, are unaffected by this Agreement. However, upon the completion of a 10,000 AFY (9 mgd) expansion of groundwater production and desalting from Desalter II as provided for herein, the Parties will be deemed to have satisfied all individual and collective pre-existing obligations arising from the Peace Agreement and the OBMP Implementation Plan, whatever they may be, with regard to Future Desalters as described in Part VII of the Peace Agreement and the OBMP Implementation Plan.
- 10.3 Satisfaction of Pomona Credit. In recognition of the ongoing benefits received by TVMWD through the City of Pomona's anion exchange project, as its sole and exclusive responsibility, TVMWD will make an annual payment to Watermaster in an amount equal to the credit due the City of Pomona under Peace Agreement Paragraph 5.4(b) ("the Pomona Credit").
- (a) Within ninety (90) days of each five-year period following the Effective Date of this Agreement, in its sole discretion TVMWD shall make an election whether to continue or terminate its responsibilities under this paragraph. TVMWD shall provide written notice of such election to Watermaster.
  - (b) Watermaster will provide an annual invoice to TVMWD for the amount of the Pomona Credit.
  - (c) Further, in any renewal term of the Peace Agreement, TVMWD will continue to make an equivalent financial contribution which TVMWD consents to

October 25, 2007

Watermaster's use for the benefit of MZ1, subject to the same conditions set forth above with respect to TVMWD's payment of the "Pomona Credit".

- (d) In the event TVMWD elects to terminate its obligation under this Paragraph, the Peace Agreement and the responsibility for satisfying the Pomona Credit will remain unchanged and unaffected, other than as it will be deemed satisfied for each five-year period that TVMWD has actually made the specified payment.

10.4 Release. Upon WMWD's completion of a 10,000 AFY (9 mgd) expansion of groundwater production and desalting in a manner consistent with the parameters set forth in this Agreement, each Party, for itself, its successors, assigns, and any and all persons taking by or through it, hereby releases WMWD and IEUA from any and all obligations arising from WMWD's and IEUA's responsibility for securing funding, designing, and constructing Future Desalters as set forth in or arising exclusively from Article VII of the Peace Agreement and the Program Elements 3, 6, and 7, OBMP Implementation Plan only, and each Party knowingly and voluntarily waives all rights and benefits which are provided by the terms and provisions of section 1542 of the Civil Code of the State of California, or any comparable statute or law which may exist under the laws of the State of California, in or arising from WMWD's and IEUA's responsibility for securing funding, designing, and constructing Future Desalters as set forth in or arising exclusively from Article VII of the Peace Agreement and the OBMP Implementation Plan only. The Parties hereby acknowledge that this waiver is an essential and material term of this release. The Parties, and each of them, acknowledge that Civil Code section 1542 provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Each Party understands and acknowledges that the significance and consequence of this waiver of Civil Code section 1542 is the waiver of any presently unknown claims as described above, and that if any Party should eventually suffer additional damages arising out of the respective claim that Party will not be able to make any claim for those additional damages. Further, all Parties to this Agreement acknowledge that they consciously intend these consequences even as to claims for such damages that may exist as of the date of this Agreement but which are not known to exist and which, if known, would materially affect the Parties' respective decision to execute this Agreement, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

10.5 Assessments. In view of the substantial investments previously made and contemplated by Watermaster and the parties over the term of the Peace Agreement and in particular to implement the OBMP, the parties desire substantial certainty regarding Watermaster's principles of cost allocation. The principles set forth in the Peace Agreement and the

October 25, 2007

Peace II Measures including those stated herein, constitute a fair and reasonable allocation of responsibility among the stakeholders. Accordingly, other than in the event of an emergency condition requiring prompt action by Watermaster or to correct a manifest injustice arising from conditions not presently prevailing in the Basin and unknown to Watermaster and the parties and then only to the extent Watermaster retains discretion, Watermaster will maintain the principles of cost allocation for apportioning costs and assessments as provided in the Judgment and now implemented through the Peace Agreement and the Peace II Measures for the balance of the initial Term of the Peace Agreement. For the balance of the initial Term of the Peace Agreement, the parties to the Peace II Agreement will waive any objections to the Watermaster's principles of cost allocation other than as to issues regarding whether Watermaster has: (i) properly followed appropriate procedures; (ii) correctly computed assessments and charges; and (iii) properly reported .

10.6 Reservation of Rights. Nothing herein shall be construed as precluding any party to the Judgment from seeking judicial review of any Watermaster action on the grounds that Watermaster has failed to act in accordance with the Peace Agreement as amended, this Agreement, the Amended Judgment, the OBMP Implementation Plan as amended and applicable law.

October 25, 2007

**ARTICLE XI**  
**TERM**

- 11.1 Commencement. This Agreement will become effective upon the satisfaction of all conditions precedent and shall expire on the Termination Date.
- 11.2 Termination. This Agreement is coterminous with the initial term of the Peace Agreement and will expire of its own terms and terminate on the date of the Initial Term of the Peace Agreement.

**ARTICLE XIII**  
**GENERAL PROVISIONS**

- 12.1 Construction of this Agreement. Each Party, with the assistance of competent legal counsel, has participated in the drafting of this Agreement and any ambiguity should not be construed for or against any Party on account of such drafting.
- 12.2 Awareness of Contents/Legal Effect. The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.
- 12.3 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute on Agreement notwithstanding that the signatures of all Parties do not appear on the same page.

IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

Party: \_\_\_\_\_

By \_\_\_\_\_

# Attachment L



September 21, 2007

**ATTACHMENT "L"**

**SECOND AMENDMENT  
TO PEACE AGREEMENT**

THIS SECOND AMENDMENT TO PEACE AGREEMENT ("AGREEMENT") is dated the \_\_\_\_ of September 2007 regarding the Chino Groundwater Basin.

**RECITALS**

- A. The Parties entered into that certain "Peace Agreement" dated June 29, 2000. The Peace Agreement was approved by the Court in San Bernardino Superior Court Case No. RCV 51010.
- B. The Parties entered into a First Amendment to the Peace Agreement on September 2nd of 2004 regarding the deletion of Salt Credits and the Stormwater Component of New Yield.

NOW THEREFORE, in consideration of the covenants and conditions herein contained, and for other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

**Section 1. OBMP Credits Modified.** The Peace Agreement § 5.4(d) will be amended to read:

- (d) Watermaster shall adopt reasonable procedures to evaluate requests for OBMP credits against future OBMP Assessments or for reimbursement. Any Producer or party to the Judgment, including but not limited to the State of California, may make application to Watermaster for reimbursement or credit against future OBMP Assessments for any capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating groundwater Production facilities, that carries out the purposes of the OBMP and specifically relates to the prevention of subsidence in the Basin, in advance of construction or that is prospectively dedicated to service of the stated goals of the OBMP. Watermaster shall exercise reasonable discretion in making its determination, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future OBMP Assessments under this section where the Producer or party to the Judgment was otherwise legally compelled to make the improvement.

September 21, 2007

**Section 2. Increase the Limit on Storage of Local Supplemental Water** The current cap of 50,000 acre-feet of Storage of Supplemental Water described in paragraph 5.2(b)(iv) and 5.2(b)(vii) of the Peace Agreement shall be increased from 50,000 to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement paragraph 5.2(b)(v) shall no longer be in effect with regard to such applications.

**Section 3. Effect of Amendment.** Except as amended hereby, the Peace Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:



**The materials included as Exhibit 1 to  
the Peace II Agreement are included  
as attachments to Resolution 07-05  
and the Resolution itself.**

# Exhibit 2



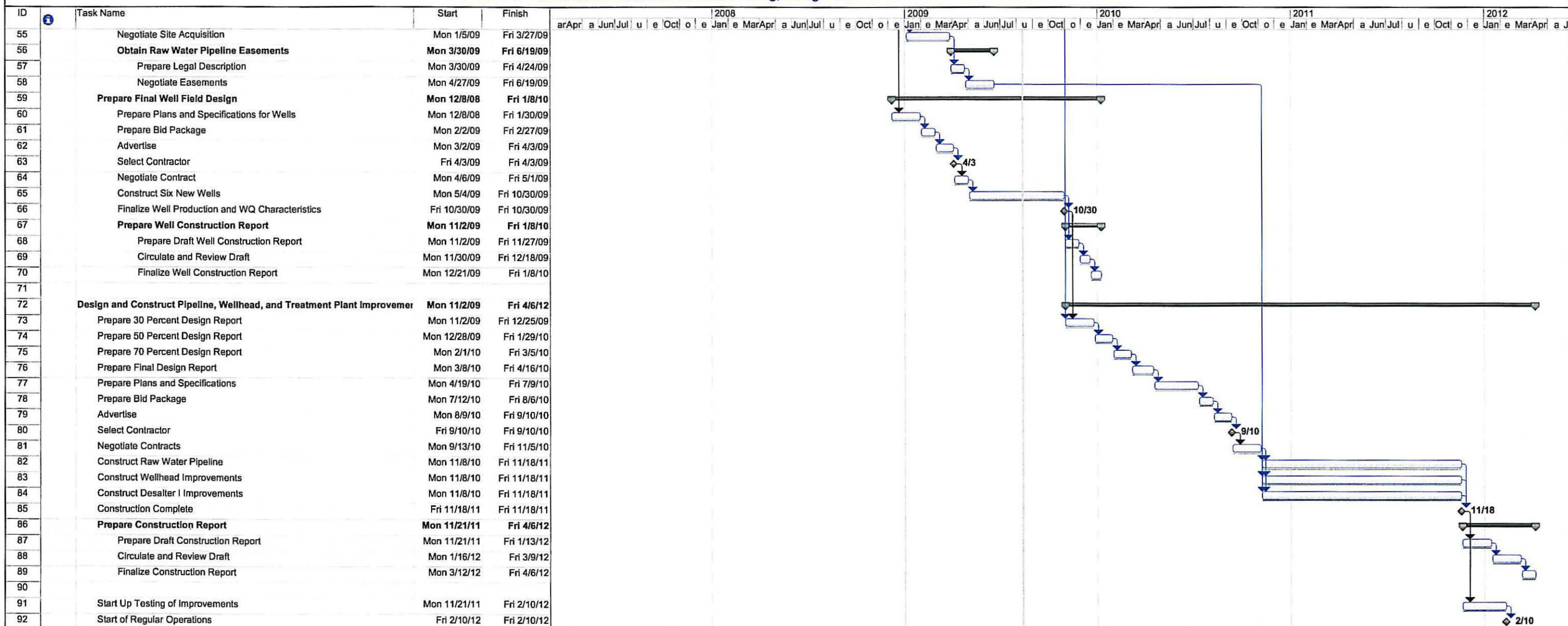








**Schedule B -- Accelerated Schedule for the Planning, Design and Construction of the Chino Creek Well Field**

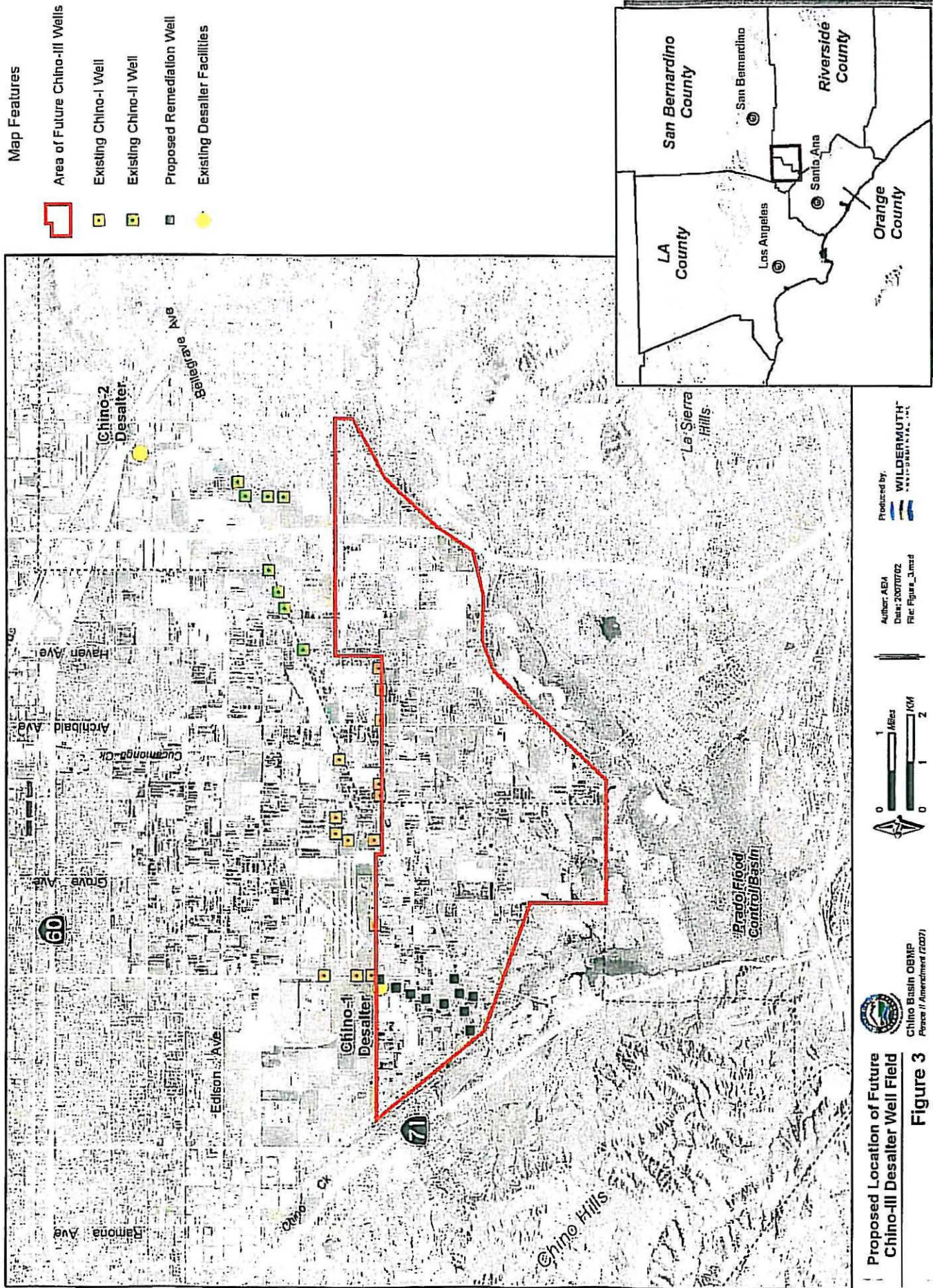


Project: 20070329 Schedule B Chino C  
Date: Wed 9/12/07

Task Progress Summary External Tasks Split   
 Split Milestone Project Summary External MileTask

# Exhibit 3





**Proposed Location of Future Chino-III Desalter Well Field**  
**Figure 3**



# Exhibit I

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
RANCHO CUCAMONGA DISTRICT

DEC 21 2007

By John M. Taha  
Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

THE CITY OF CHINO, et al.

Defendants.

CASE NO. RCV 51010

ORDER CONCERNING MOTION  
FOR APPROVAL OF PEACE II  
DOCUMENTS

Date: Submitted on Nov. 29, 2007  
Dept. 8

**I. Introduction**

A. Watermaster's Filings

On October 25, 2007, Chino Basin Watermaster filed a Motion for Approval of Peace II Documents. Watermaster's motion requests Court approval of three proposed Judgment amendments, a proposed amendment to the Peace Agreement, a Purchase and Sale Agreement for water from the Overlying (Non-Agricultural) Pool, a Supplement to the Optimum Basin Management Program ("OBMP") Implementation Plan, a Peace II Agreement, and proposed amendments to Watermaster's Rules and Regulations. Watermaster requested a November 29, 2007 hearing on the motion.

On November 15, 2007, Watermaster filed a Transmittal of Supplemental Documents,

1 which included the 2007 CBWM Groundwater Model Documentation and Evaluation of the  
2 Peace II Project Description, Final Report, dated November 2007. On December 13, 2007,  
3 Watermaster filed its Second Transmittal of Supplemental Documents, which included several  
4 stipulations.

5 Watermaster filed its Response to Special Referee's Preliminary Comments and  
6 Recommendations on Motion for Approval of Peace II Documents on December 14, 2007. The  
7 Watermaster's Response noted: "The technical issues raised by the Referee are addressed in a  
8 separate document that is being prepared by Mark Wildermuth, which will be filed at a later  
9 date." (Watermaster Response p. 2, fn. 2) Mr. Wildermuth's Letter Report to Watermaster on  
10 the subject "Evaluation of Alternative 1C and Declining Safe Yield" (December 18, 2007) was  
11 filed with the Court December 19, 2007.

12 B. Filings in Support of Watermaster's Motion

13 Numerous filings have been received in support of the Motion. On November 9, 2007,  
14 Fontana Union Water Company, San Antonio Water Company, and Monte Vista Water District  
15 filed Joinders to Watermaster's motion. The City of Pomona filed a Statement in Support of the  
16 motion, also on November 9, 2007. On November 13, 2007, Inland Empire Utilities Agency  
17 ("IEUA") filed a Joinder to Watermaster's motion and Declaration of Richard Atwater. Also on  
18 November 14, 2007, the City of Chino Hills, the City of Upland, the Agricultural Pool, and  
19 Cucamonga Valley Water District filed Joinders to Watermaster's motion.

20 On November 15, 2007, Western Municipal Water District filed a Joinder to  
21 Watermaster's motion and Declaration of John Rossi. Also on November 15, 2007, the City of  
22 Ontario filed a Joinder to the motion and Declaration of Kenneth Jeske. The third filing on  
23 November 15, 2007, was Three Valleys Municipal Water District's Joinder to the motion and  
24 Declaration of Jeff Kightlinger. On November 26, 2007, the City of Chino filed a Joinder and  
25 Statement in Support of Watermaster Motion to Approve Peace II Documents.

26 On November 29, 2007, Watermaster and the Chino Basin Water Conservation District  
27 entered into and filed a stipulation stating the Conservation District's support for the Court's  
28 approval of the Peace II Measures in consideration for certain clarifications. Watermaster's

1 second transmittal, filed on November 29, 2007, included a Declaration from Ronald Craig on  
2 behalf of the City of Chino Hills, and a Declaration from Eldon Horst for Jurupa Community  
3 Services District, both in support of approval of the Peace II Measures.

#### 4 C. Court's Order to Show Cause

5 An Order to Show Cause Why Court Should Not Continue the Hearing on Motion for  
6 Approval of Peace II Documents ("OSC") was issued on November 15, 2007. The OSC stated  
7 the Court intended to continue the hearing on Watermaster's Motion "... absent sufficient cause  
8 being shown by, among other things, testimony of Mark Wildermuth elicited on November 29,  
9 2007." (OSC p. 4, lns. 24-25) The Chino Basin Water Conservation District filed a Response to  
10 the OSC on November 19, 2006, and Watermaster filed a Response to Order to Show Cause and  
11 Conservation District on November 26, 2007.

#### 12 D. Special Referee Reports

13 Special Referee Anne Schneider's Preliminary Comments and Recommendations on  
14 Motion for Approval of Peace II Documents ("Preliminary Report") was filed on November 27,  
15 2007. The Special Referee filed her Final Report and Recommendations on Motion for  
16 Approval of Peace II Documents on December 20, 2007.

#### 17 E. November 29, 2007 Court Hearing

18 The Court held a hearing on November 29, 2007, with testimony from Mr. Manning and  
19 Mr. Wildermuth. The Reporter's Transcript was available December 11, 2007.

## 20 **II. Discussion**

21 An extraordinary effort has been made to get the motion, all of the supporting and  
22 supplemental pleadings and other documents, and the Special Referee reports filed before the  
23 end of 2007. The Court has considered all of the pleadings, declarations, reports and other  
24 documents, as well as the testimony presented on November 29, 2007. It is obvious that  
25 everyone involved in the "Peace II" process has been working diligently. Moreover, the Court is  
26 appreciative of the way this case has been managed in recent years. The Court appreciates all of  
27 your efforts, including but not limited to the parties, the attorneys, Watermaster and its attorney,  
28 the Special Referee, and the Technical Expert's education of the Court in this complex matter.

1           A. Guidance Regarding the Roles of Watermaster and the Special Referee

2           Watermaster asserts that the traditional role of Watermaster and its interaction with the  
3 Court is made more complex in Chino Basin by the existence of a Special Referee.

4           Watermaster states that no other adjudicated groundwater basin has both a Watermaster and a  
5 Special Referee, and notes that the Judgment does not provide for a referee. (Watermaster  
6 Response, *supra*, p. 3, lns. 11-16.) Watermaster asks for guidance as to Watermaster's and the  
7 Special Referee's roles.

8                     1. Watermaster's Role

9           The Court accepts Watermaster's analysis of its role: "Watermaster's legal existence  
10 emanates from the Judgment. All of Watermaster's enumerated powers originate within and  
11 arise from the Judgment. It is not a public agency or private entity that has been formed under  
12 some general or special law. Its duty is 'to administer and to enforce the provisions of this  
13 Judgment and any subsequent instructions or orders of the Court hereunder.' [Citation.] As all  
14 special masters, Watermaster operates as an extension of the Court and to meet the needs of the  
15 Court in carrying out its obligations under the Judgment and Article X, Section 2 of the  
16 California Constitution." (Watermaster Resp. to Sp. Ref. Prelim. Comments, p. 2, lns. 22-25 and  
17 p. 3, lns. 1-3.) Although it is not stated in Watermaster's pleadings, it is important to note that it  
18 is not Watermaster's duty to be an advocate for any, or for all, of the parties. Watermaster's  
19 position with respect to the parties should be neutral.

20                     2. Special Referee's Role

21           The Court also accepts the Special Referee's analysis of the role of a referee: "The role  
22 of the Special Referee is to (1) provide the court with as full and complete explanations as  
23 possible of what the Watermaster requests or of issues that have been brought to the court; and  
24 (2) to make recommendations to the court as appropriate." (Sp. Rev. Fin. Report, p. 3, lns. 4-6.)  
25 The Special Referee's role in this case is discussed further below.

26                     3. Courts Favor Referee in Water Law Determinations

27           The recommendation that trial courts obtain expert advice in water law decisions was  
28 recognized by the California Supreme Court long ago: "... in view of the complexity of the

1 factual issues in water cases and the great public interests involved, [it has been recommended]  
2 that the trial courts seek the aid of the expert advice and assistance provided for in that section  
3 [former Water Code Section 24, now Water Code Section 2000].” (*City of Pasadena v. City of*  
4 *Alhambra* (1949) 33 Cal.2d 908, 917.)

5 In this case, it was the parties who first suggested to the Court in the early 1990’s that an  
6 order of reference be made to Anne Schneider. That was in connection with motions entitled  
7 Joint Motion to Interpret, Enforce, Carry-out, Modify, Amend or Amplify the Judgment Herein  
8 (dated August 25, 1992) and California Steel Industries, Inc.’s Notice of Motion to Interpret,  
9 Enforce, Carry-out, Modify, Amend, or Amplify Paragraph 7, Page 66 of Exhibit G of the 1978  
10 Judgment (dated March 25, 1993).

11 Then in April 1997, the Court, on its own motion, ordered a reference to Anne Schneider  
12 under Code of Civil Procedure Section 639, subdivision (d). In that instance, the reference to  
13 Anne Schneider was made as an alternative to ordering a reference to the SWRCB under Water  
14 Code Sections 2000 *et seq.*, in connection with a Motion for Order that Audit Commissioned by  
15 Watermaster is not a Watermaster Expense and Motion to Appoint a Nine-Member Watermaster  
16 Board. (Ruling and Order of Special Reference, dated April 29, 1997, pp. 7, & 10.)

#### 17 4. Referee Status in this Case

18 In April 1998, the Court first ordered a reference to Anne Schneider in connection with  
19 an uncontested matter: the development of an Optimum Basin Management Program for Chino  
20 Basin (“OBMP”). Special Referee Schneider was asked “to report and make recommendations  
21 to the court concerning the contents, implementation, effectiveness, and shortcomings of the  
22 optimum basin management plan.” (Ruling, dated Feb. 19, 1998, p. 9, lns. 12-16.) The Court  
23 authorized the Special Referee “to conduct hearings, if necessary, to ensure the development of  
24 all essential elements of the program.” (*Id.* at p. 10, lns. 13-14.)

25 Since that appointment, the Special Referee has been providing expert advice and  
26 conducting workshops either at the Court’s request or the request of the parties or Watermaster,  
27 as authorized in various court orders. For example, Watermaster requested that a workshop be  
28 held to present to the Court through the Special Referee, the Interim Plan for Management of

1 Subsidence. (See Order Scheduling Workshop, dated June 19, 2002, p. 2, lns. 6-10.) The  
2 Special Referee also has been requested to monitor the Peace II process and the plan for future  
3 desalters and related activities. (Order Re-Appointing Nine-Member Board, dated Feb. 9, 2006,  
4 p. 5, lns. 9-17.) It should be clear from this discussion that the Special Referee in this case does  
5 not necessarily function as the typical referee described in Watermaster's Response to the  
6 Special Referee's Preliminary Report, at page 4.

7 This Court has said on many occasions that the assistance provided by the Special  
8 Referee is invaluable. It is the desire of the Court that the Special Referee continue to monitor  
9 the contents, implementation, effectiveness and shortcomings (if any) of the OBMP. It is  
10 suggested in the Special Referee's Final Report that because of Watermaster's involvement in  
11 negotiations related to the OBMP "the Special Referee may be less constrained than  
12 Watermaster in raising questions and voicing concerns...." (Sp. Ref. Final Report, p. 3, lns. 13-  
13 16.) In participating in the parties' negotiations, Watermaster must not forget that its function is  
14 to meet the needs of the Court in carrying out its obligations under the Judgment and Article X,  
15 Section 2 of the California Constitution.

#### 16 B. Findings Pertaining to Watermaster's Motion

17 Watermaster's motion requests review and court approval under paragraphs 15 and 31 of  
18 the Judgment. Under paragraph 15, the Court reserves jurisdiction to make further or  
19 supplemental orders "as may be necessary or appropriate for interpretation, enforcement or  
20 carrying out" the Judgment and "to modify, amend or amplify" any of its provisions. Under  
21 Judgment paragraph 31, in reviewing Watermaster decisions, "[T]he Court shall require the  
22 moving party to notify the active parties....of a date for taking evidence and argument, and on  
23 the date so designated shall review de novo the question at issue. Watermaster's findings or  
24 decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive  
25 or prima facie proof of any fact in issue."

26 In addition to the testimony offered at the hearing on November 29, 2007, Watermaster  
27 has presented several declarations and other documentary evidence in support of its motion. The  
28 Court has considered all of the evidence presented by Watermaster and finds there is substantial

1 evidence to support Watermaster's implied findings that the proposed Judgment amendments  
2 and other Peace II documents will promote the public interest, will protect the rights of the  
3 parties, and are consistent with California Constitution Article X, section 2. The key points  
4 relied upon by Watermaster, and which were proved to the Court, are enumerated on page 9 of  
5 the Special Referee's Final Report and Recommendations on Motion for Approval of Peace II  
6 Documents, and are incorporated herein by reference.

### 7 **III. Order**

8 **SUBJECT TO THE CONTINUING JURISDICTION OF THE COURT, AND TO THE**  
9 **SATISFACTION OF THE CONDITIONS SUBSEQUENT LISTED BELOW**, the Court hereby  
10 makes the following orders:

- 11 1. The amendments to Judgment Exhibit "I", Judgment Paragraph 8, and Judgment  
12 Exhibit "G" are hereby approved.
- 13 2. Watermaster shall proceed in accordance with the second amendment to the Peace  
14 Agreement.
- 15 3. Watermaster's adoption of Resolution 07-05 is approved and Watermaster shall  
16 proceed in accordance with the terms of the resolution and the documents attached  
17 thereto.
- 18 4. The Court hereby adopts the recommendations made in Special Referee's Final  
19 Report and Recommendations on Motion for Approval of Peace II Documents, which  
20 are incorporated herein by reference.
- 21 5. A hearing is set for Thursday, May 1, 2008, at 2:00 p.m. for the Court to review  
22 Watermaster's compliance with the first four conditions listed below.

#### 23 **Conditions Subsequent**

- 24 1. By February 1, 2008, Watermaster shall prepare and submit to the Court a brief to  
25 explain the amendments to Judgment Paragraph 8 and Judgment "G".
- 26 2. By February 1, 2008, Watermaster shall prepare and submit to the Court for approval  
27 a corrected initial schedule to replace Resolution No. 07-05 Attachment "E", together  
28 with an explanation of the corrections made.



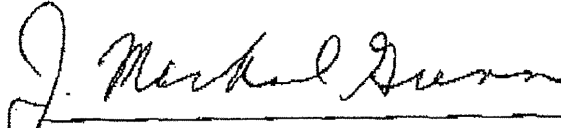
- 1 3. By March 1, 2008, Watermaster shall prepare and submit to the Court for approval a  
2 new Hydraulic Control technical report that shall address all factors included in the  
3 Special Referee's Final Report and Recommendations. The new Hydraulic Control  
4 report shall include technical analysis of the projected decline in safe yield, and a  
5 definition and analysis of "new equilibrium" issues.
- 6 4. By April 1, 2008, Watermaster shall report to the Court on the status of CEQA  
7 documentation, compliance, and requirements, and provide the Court with assurances  
8 that Watermaster's approval and participation in any project that is a "project" for  
9 CEQA purposes has been or will be subject to all appropriate CEQA review.
- 10 5. By July 1, 2008, Watermaster shall prepare and submit to the Court a detailed outline  
11 of the scope and content of its first Recharge Master Plan update, and shall report its  
12 progress by January 1, 2009, and July 1, 2009.
- 13 6. By July 1, 2008, Watermaster shall report to the Court on the development of  
14 standards and criteria by which the RWQCB will determine that hydraulic control is  
15 achieved and maintained.
- 16 7. By December 31, 2008, Watermaster shall prepare and submit to the Court for  
17 approval a revised schedule to replace the corrected initial schedule, which submittal  
18 shall include a reconciliation of new yield and stormwater estimates for 2000/01  
19 through 2006/07, and a discussion of how Watermaster will account for  
20 unreplenished overproduction for that period.
- 21 8. By July 1, 2010, Watermaster shall prepare and submit to the Court for approval an  
22 updated Recharge Master Plan. The updated Recharge Master Plan shall include all  
23 elements listed in the Special Referee's Final Report and Recommendations.
- 24 9. Watermaster shall comply with all commitments it has made in the Peace II  
25 Documents, whether or not specifically included in these conditions subsequent.

26 Watermaster is forewarned that a failure to comply with any of the above conditions subsequent  
27 will render the Court's approval of Watermaster's motion null and void. A lack of compliance  
28 with the conditions subsequent will also be seen as a failure by Watermaster, through its nine-

1 member Board, to perform its most important duty: to administer and to enforce the provisions of  
2 this Judgment and any subsequent instructions or orders of the Court.

3 IT IS SO ORDERED.

4 Dated: December 21, 2007

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J. Michael Gunn, Judge

# Exhibit J

**MINUTES**  
**CHINO BASIN WATERMASTER**  
**WATERMASTER BOARD – SPECIAL MEETING (WORKSHOP NO. 3)**  
July 28, 2022

The Watermaster Board Special Meeting (Workshop No. 3) was held at the offices of the Chino Basin Watermaster located at 9641 San Bernardino Road, Rancho Cucamonga, CA and via Zoom (conference call and web meeting) on July 28, 2022.

**WATERMASTER BOARD MEMBERS PRESENT**

James Curatalo, Chair	Minor Representative
Jeff Pierson, Vice-Chair	Agricultural Pool – Crops
Bob Kuhn, Secretary/Treasurer	Three Valleys Municipal Water District
Bob Bowcock	CalMat Co.
Scott Burton	Monte Vista Water District
Steve Elie	Inland Empire Utilities Agency
Betty Folsom	Jurupa Community Services District
Mike Gardner	Western Municipal Water District

**WATERMASTER BOARD MEMBERS PRESENT ON ZOOM**

Pete Hall	Agricultural Pool – State of CA -CIM
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**WATERMASTER STAFF PRESENT**

Peter Kavounas	General Manager
Joseph Joswiak	Chief Financial Officer
Edgar Tellez Foster	Water Resources Mgmt. & Planning Dir.
Anna Nelson	Director of Administration
Justin Nakano	Water Resources Technical Manager
Denise Morales	Executive Assistant II/Board Clerk
Ruby Favela	Administrative Assistant
Alonso Jurado	Senior Field Operations Specialist
David Huynh	Senior Field Operations Specialist

**WATERMASTER CONSULTANTS PRESENT**

Scott Slater	Brownstein Hyatt Farber Schreck, LLP
Andy Malone	West Yost
Garrett Rapp	West Yost
Carolina Sanchez	West Yost
Mark Wildermuth	West Yost

**WATERMASTER CONSULTANTS PRESENT ON ZOOM**

Brad Herrema	Brownstein Hyatt Farber Schreck, LLP
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**OTHERS PRESENT AT WATERMASTER**

Brian Geye	California Speedway Corporation
Amanda Coker	Cucamonga Valley Water District
Eduardo Espinoza	Cucamonga Valley Water District
Jiwon Seung	Cucamonga Valley Water District
Chris Berch	Jurupa Community Services District
Bryan Smith	Jurupa Community Services District
Kati Parker	Minor Representative
Kurt Schwabe	University of Riverside
Laura Roughton	Western Municipal Water District

**OTHERS PRESENT ON ZOOM**

Natalie Avila	City of Chino
Dave Crosley	City of Chino
Ron Craig	City of Chino Hills

Peter Rogers	City of Chino Hills
Courtney Jones	City of Ontario
Chris Quach	City of Ontario
Chris Diggs	City of Pomona
Nicole deMoet	City of Upland
Braden Yu	City of Upland
Mark Gibboney	Cucamonga Valley Water District
Ben Lewis	Golden State Water Company
Joshua Aguilar	Inland Empire Utilities Agency
Shivaji Deshmukh	Inland Empire Utilities Agency
Marco Tule	Inland Empire Utilities Agency
Andrew Gagen	Kidman Gagen Law, LLP
Justin Scott-Coe	Monte Vista Irrigation Company
Manny Martinez	Monte Vista Water District
Justin Scott-Coe	Monte Vista Water District
Fred Fudacz	Nossaman LLP
Robert Thornton	Nossaman LLP
John Lopez	Santa Ana River Water Company
Bill Wyatt	Sheppard, Mullin, Richter & Hampton
Carol Boyd	State of CA – DOJ
Tariq Awan	State of CA – CIM
David De Jesus	Three Valleys Municipal Water District
Matthew Litchfield	Three Valleys Municipal Water District
Kaitlyn Dodson-Hamilton	Tom Dodson & Associates
Nicole deMoet	West End Consolidated Water Co.
Braden Yu	West End Consolidated Water Co.
Richard Rees	Wood plc

### **FLAG SALUTE**

Chair Curatalo led the Board in the flag salute.

### **CALL TO ORDER**

Chair Curatalo called the Watermaster Board Special Meeting to order at 9:04 a.m.

### **ROLL CALL**

(00:00:01) Ms. Morales conducted the roll call and announced that a quorum was present.

### **PUBLIC COMMENTS**

Members of the public addressed the Watermaster Board on Item I.C. A discussion ensued.

### **AGENDA – ADDITIONS/REORDER**

None

### **I. BUSINESS ITEMS**

#### **A. RESOLUTION 2022-07 AUTHORIZING REMOTE TELECONFERENCE MEETINGS UNDER BROWN ACT**

Adopt Resolution 2022-07 Authorizing Remote Teleconference Meetings under the Ralph M. Brown Act.

Mr. Steve Elie joined the meeting at 9:10 a.m.

(00:09:47)

*Motion by Mr. Steve Elie, seconded by Mr. Bob Kuhn, and passed unanimously.*

***Moved to approve Business Item I.A. as presented.***

**B. BOARD WORKSHOP: THE 2000 AND 2020 OBMP (INFORMATION ONLY)**

(00:11:56) Messrs. Kavounas, Wildermuth, Slater, and Tellez Foster gave a presentation. A discussion ensued.

**C. 2020 OBMP CEQA PREPARATION PROCESS**

1. Direct staff to meet with all interested stakeholders, including the Four Appropriators, to evaluate the current status of the 2020 OBMP, consider changes in circumstances, and gather stakeholder input.
2. Using input from the meetings with stakeholders, develop a project description for the 2020 OBMP PEIR and proceed with the effort within the approved budget.

(03:45:32) Mr. Kavounas gave a presentation. A discussion ensued.

(04:10:12)

*Motion by Mr. Steve Elie, seconded by Mr. Bob Kuhn. A discussion ensued.*

***Moved to approve Business Item I.C. as presented.***

(04:11:18)

*Amended Motion by Mr. Scott Burton, seconded by Mr. Bob Bowcock, and failed with 2 in favor, and 7 opposed.*

***Moved to approve Business Item I.C. with the added text of “after approval by the parties” for Item 2.***

(04:14:05)

*A vote was taken on the main motion and passed by majority.*

***Moved to approve Business Item I.C. as presented.***

**II. CONFIDENTIAL SESSION – POSSIBLE ACTION**

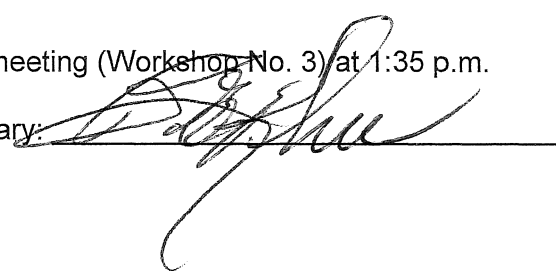
A Confidential Session may be held during the Board Special meeting for the purpose of discussion and possible action.

None

**ADJOURNMENT**

Chair Curatalo adjourned the Watermaster Board special meeting (Workshop No. 3) at 1:35 p.m.

Secretary: \_\_\_\_\_



Approved: \_\_\_\_\_ August 25, 2022

**Attachments:**

1. 20220728 Board Special Meeting Roll Call Vote Outcome (Business Item I.A.)
2. 20220728 Board Special Meeting Roll Call Vote Outcome – Amended Motion (Business Item I.C.)
3. 20220728 Board Special Meeting Roll Call Vote Outcome – Main Motion (Business Item I.C.)

**ATTACHMENT 1**

<b>July 28, 2022 Watermaster Board Special Meeting Roll Call Vote Outcome</b>
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<b>Member</b>	<b>Alternate</b>	<b>Business Item I.A.</b>
Burton, Scott		Yes
Elie, Steve		Yes
Folsom, Betty		Yes
Gardner, Mike		Yes
Hall, Pete*		Yes
Kuhn, Bob, Secretary/Treasurer		Yes
Pierson, Jeff, Vice-Chair		Yes
Bowcock, Bob		Yes
Curatalo, James, Chair		Yes
	<b>OUTCOME:</b>	<b>Passed Unanimously</b>

\*Participated via Zoom

## ATTACHMENT 2

### July 28, 2022 Watermaster Board Special Meeting Roll Call Vote Outcome

<b>Member</b>	<b>Alternate</b>	<b>Business Item I.C. (Amended Motion)</b>
Burton, Scott		Yes
Elie, Steve		No
Folsom, Betty		No
Gardner, Mike		No
Hall, Pete*		No
Kuhn, Bob, Secretary/Treasurer		No
Pierson, Jeff, Vice-Chair		No
Bowcock, Bob		Yes
Curatalo, James, Chair		No
	<b>OUTCOME:</b>	<b>Failed</b>

\*Participated via Zoom



**ATTACHMENT 3**

**July 28, 2022 Watermaster Board Special Meeting Roll Call Vote Outcome**

<b>Member</b>	<b>Alternate</b>	<b>Business Item I.C. (Main Motion)</b>
Burton, Scott		No
Elie, Steve		Yes
Folsom, Betty		Yes
Gardner, Mike		Yes
Hall, Pete*		Yes
Kuhn, Bob, Secretary/Treasurer		Yes
Pierson, Jeff, Vice-Chair		Yes
Bowcock, Bob		Yes
Curatalo, James, Chair		Yes
	<b>OUTCOME:</b>	<b>Passed by Majority</b>

\*Participated via Zoom

# Exhibit K

**MINUTES  
CHINO BASIN WATERMASTER  
ADVISORY COMMITTEE MEETING**

May 19, 2022

The Advisory Committee meeting was held at the Watermaster offices located at 9641 San Bernardino Road, Rancho Cucamonga, CA., and via Zoom (conference call and web meeting) on May 19, 2022.

**ADVISORY COMMITTEE MEMBERS PRESENT**

**APPROPRIATIVE POOL COMMITTEE MEMBERS PRESENT AT WATERMASTER**

Chris Berch, Chair	Jurupa Community Services District
Dave Crosley	City of Chino
Courtney Jones	City of Ontario
Chris Diggs	City of Pomona
Amanda Coker for Eduardo Espinoza	Cucamonga Valley Water District
Justin Scott-Coe	Monte Vista Irrigation Company
Justin Scott-Coe	Monte Vista Water District

**APPROPRIATIVE POOL COMMITTEE MEMBERS PRESENT ON ZOOM**

Ron Craig	City of Chino Hills
Nicole deMoet for Braden Yu	City of Upland
Eduardo Espinoza	Cucamonga Valley Water District
Cris Fealy	Fontana Water Company
Josh Swift	Fontana Union Water Company
Brian Lee	San Antonio Water Company

**NON-AGRICULTURAL POOL COMMITTEE MEMBERS PRESENT AT WATERMASTER**

Brian Geye, Vice-Chair	California Speedway Corporation
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**NON-AGRICULTURAL POOL COMMITTEE MEMBERS PRESENT ON ZOOM**

Bob Bowcock	CalMat Co.
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**AGRICULTURAL POOL COMMITTEE MEMBERS PRESENT ON ZOOM**

Jeff Pierson, Second Vice-Chair	Crops
Larry Cain	State of California – DOJ
Pete Hall	State of California – DOJ
Marilyn Levin for Jimmy Medrano	State of California – DOJ

**WATERMASTER BOARD MEMBERS PRESENT ON ZOOM**

Jim Curatalo	Appropriative Pool – Minor Representative
Bob Kuhn	Three Valleys Municipal Water District

**WATERMASTER STAFF PRESENT**

Peter Kavounas	General Manager
Joseph Joswiak	Chief Financial Officer
Edgar Tellez Foster	Water Resources Mgmt. and Planning Dir.
Anna Nelson	Director of Administration
Justin Nakano	Water Resources Technical Manager
Frank Yoo	Data Services and Judgment Reporting Mgr.
Janine Wilson	Senior Accountant
Ruby Favela	Administrative Assistant

**WATERMASTER CONSULTANTS PRESENT AT WATERMASTER**

Andy Malone	West Yost
Garrett Rapp	West Yost

**WATERMASTER CONSULTANTS PRESENT ON ZOOM**

Brad Herrema Brownstein Hyatt Farber Schreck, LLP

**OTHERS PRESENT AT WATERMASTER**

Jiwon Seung Cucamonga Valley Water District  
Bryan Smith Jurupa Community Services District

**OTHERS PRESENT ON ZOOM**

Natalie Avila	City of Chino
Eunice Ulloa	City of Chino
Rob Hills	Cucamonga Valley Water District
John Bosler	Cucamonga Valley Water District
Tarren Alicia Torres	Egoscue Law Group, Inc.
Ben Lewis	Golden State Water Company
Andrea Carruthers	Inland Empire Utilities Agency
Joshua Aguilar	Inland Empire Utilities Agency
Shivaji Deshmukh	Inland Empire Utilities Agency
Christiana Daisy	Inland Empire Utilities Agency
Manny Martinez	Monte Vista Water District
Stephanie Reimer	Monte Vista Water District
John Lopez	Santa Ana River Water Company
Todd Minten	Santa Ana River Water Company
Mallory Gandara	Western Municipal Water District
Richard Rees	Wood plc

**CALL TO ORDER**

Chair Berch called the Advisory Committee meeting to order at 9:00 a.m.

**ROLL CALL**

Ms. Wilson conducted the roll call and announced that quorum was present.

**AGENDA – ADDITIONS/REORDER**

None

**I. CONSENT CALENDAR**

**Note: All matters listed under the Consent Calendar are considered to be routine and non-controversial and will be acted upon by one motion in the form listed below. There will be no separate discussion on these items prior to voting unless any members, staff, or the public requests specific items be discussed and/or removed from the Consent Calendar for separate action.**

**A. MINUTES**

Approve as presented:

1. Minutes of the Advisory Committee Meeting held on April 21, 2022

**B. FINANCIAL REPORTS**

Receive and file as presented:

1. Cash Disbursements for the month of March 2022
2. Watermaster VISA Check Detail for the month of March 2022
3. Combining Schedule for the Period July 1; 2021 through March 31, 2022
4. Treasurer’s Report of Financial Affairs for the Period March 1, 2022 through March 31, 2022

5. Budget vs. Actual Report for the Period July 1, 2021 through March 31, 2022
6. Cash Disbursements for April 2022 (Information Only)

**C. APPLICATION: WATER TRANSACTION**

Provide advice and assistance to the Watermaster Board on the proposed transaction: The Purchase of 7,500 acre-feet of water from Cucamonga Valley Water District by Fontana Water Company. This purchase is made from Cucamonga Valley Water District's Annual Production Rights. Date of Application: April 4, 2022.

(0:03:23)

*Motion by Mr. Chris Diggs seconded by Mr. Brian Geye, and passed unanimously.*

***Moved to approve the Consent Calendar as presented.***

**II. BUSINESS ITEMS**

**A. WATERMASTER FISCAL YEAR 2022/23 PROPOSED BUDGET**

Approve the Watermaster Fiscal Year 2022/23 Proposed Budget as presented.

(0:03:41) Mr. Joswiak gave a report and presentation. A discussion ensued.

(0:09:09)

*Motion by Mr. Ron Craig seconded by Mr. Jeff Pierson, and passed by majority 72.141 volume votes as attached to these minutes.*

***Moved to approve the Business Item II.A. as presented.***

**III. REPORTS/UPDATES**

**A. LEGAL COUNSEL**

1. San Bernardino Superior Court Emergency Order
2. April 22, 2022 Hearing
3. Governor's Executive Order N-7-22
4. Kaiser Permanente Lawsuit

(0:13:15) Mr. Herrema gave a report.

**B. ENGINEER**

1. Safe Yield Data Collection and Evaluation Report
2. Safe Yield Reset Methodology Update
3. Prado Basin Habitat Sustainability Committee Annual Report

(0:15:50) Mr. Malone prefaced Item 1 and invited Mr. Rapp to give a presentation. A discussion ensued.

**C. CHIEF FINANCIAL OFFICER**

None

**D. GENERAL MANAGER**

1. Regional Supply/Drought Update
2. April 26, 2022 Special Board Meeting
3. Data Portal Status
4. May 26, 2022 Special Board Meeting
5. Upcoming Training Opportunity: Roberts Rules of Order
6. Other

(0:37:16) Mr. Kavounas prefaced Item 1 and invited Mr. Deshmukh of IEUA to give a report on the Regional Water Supply/Drought Update. Mr. Kavounas then gave the remainder of the GM Report. A discussion ensued.

**E. INLAND EMPIRE UTILITIES AGENCY**

- 1. MWD Update (Written)
- 2. State and Federal Legislative Reports (Written)
- 3. Community Outreach/Public Relations Report (Written)

**F. METROPOLITAN MEMBER AGENCY REPORTS**

None

**IV. COMMITTEE MEMBER COMMENTS**

None

**V. OTHER BUSINESS**

None

**VI. CONFIDENTIAL SESSION - POSSIBLE ACTION**

A Confidential Session may be held during the Advisory Committee meeting for the purpose of discussion and possible action.

None

**ADJOURNMENT**

Chair Berch adjourned the Advisory Committee meeting at 9:44 a.m.

Secretary: 

Approved: \_\_\_\_\_ June 16, 2022

Attachment:

- 1. 20220519 Volume Vote Outcome for Business Item II.A. (Watermaster Fiscal Year 2022/23 Proposed Budget)

**QUORUM  
MET?  
YES**



**2022 ADVISORY COMMITTEE VOLUME VOTE**  
**Assessment Year 2021-2022 (Production Year 2020-2021)**

*Enter Y or N in Each Cell*

Party	Present (Y/N)	Vote (Y/N)	Assigned	Reallocated	Available	Quorum	Total Yes
Minor 1	Y	Y	3.399	0.000	3.399	3.399	3.399
Minor 2	Y	Y	3.399	0.000	3.399	3.399	3.399
Chino Hills, City Of	Y	Y	2.700	0.000	2.700	2.700	2.700
Chino, City Of	Y	N	4.170	0.000	4.170	4.170	0.000
Cucamonga Valley Water District	Y	Y	5.400	0.000	5.400	5.400	5.400
Fontana Union Water Company	Y	Y	4.371	0.000	4.371	4.371	4.371
Fontana Water Company	Y	Y	5.652	0.000	5.652	5.652	5.652
Jurupa Community Services District	Y	Y	6.828	0.000	6.828	6.828	6.828
Monte Vista Water District	Y	N	7.141	0.000	7.141	7.141	0.000
Ontario, City Of	Y	N	16.548	0.000	16.548	16.548	0.000
Pomona, City Of	Y	Y	12.365	0.000	12.365	12.365	12.365
Upland, City Of	Y	Y	3.027	0.000	3.027	3.027	3.027
AGRICULTURAL POOL	Y	Y	20.000	0.000	20.000	20.000	20.000
NON-AGRICULTURAL POOL	Y	Y	5.000	0.000	5.000	5.000	5.000
			<b>100.000</b>	<b>0.000</b>	<b>100.000</b>	<b>100.000</b>	<b>72.141</b>

**CALCULATE  
QUORUM**

**CALCULATE  
VOTES**

**"YES" VOTES  
72.141%**

**RESET ALL**

**RESET VOTES**

**"NO" VOTES  
27.859%**

**PASSED**

# Exhibit L





# CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, CA 91730  
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**PETER KAVOUNAS, P.E.**  
General Manager

## STAFF REPORT

DATE: May 26, 2022

TO: Board Members

SUBJECT: Watermaster Fiscal Year 2022/23 Approved Budget (Business Item II.A.)

SUMMARY:

Issue: A budget for Fiscal Year 2022/23 needs to be adopted.

Recommendation: Adopt the Watermaster Fiscal Year 2022/23 Approved Budget as presented.

Financial Impact: The Fiscal Year 2022/23 Approved Budget expenses are \$9,490,976 (excluding any Carryover Funds).

Future Consideration

**Watermaster Board – May 26, 2022:** Adoption (Advisory Committee Approval Required)

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ACTIONS:

**Appropriative Pool – May 12, 2022:** No action was taken

**Non-Agricultural Pool – May 12, 2022:** By majority, approved recommendation as presented and directed the Pool representatives to support at the Advisory Committee and Watermaster Board meetings subject to changes which they deem appropriate. The City of Ontario abstained.

**Agricultural Pool – May 12, 2022:** Unanimously recommended Advisory Committee approval of the budget as presented.

**Advisory Committee – May 19, 2022:** By majority vote of 72.141%, approved the FY 2022/23 budget as presented.

**Watermaster Board – May 26, 2022:**

*Watermaster's function is to administer and enforce provisions of the Judgment and subsequent orders of the Court, and to develop and implement an Optimum Basin Management Program*

## BACKGROUND

To prepare a budget of anticipated expense each year, Watermaster staff conducts meetings internally and with consultants to discuss upcoming projects and anticipated work. As the budget is developed, the related budgeted expenses are continually refined. The following budget related meetings were held during the past few months:

- The Personnel Committee met on October 21, 2021 and on March 3, 2022 to discuss and review the current organization structure, staffing levels, compensation and benefits structure, anticipated FY 2022/23 labor costs, personnel policies and other related items.
- In early January 2022, the Manager of Finance and Accounting of Inland Empire Utilities Agency, Mr. Javier Chagoyen-Lazaro, was contacted via email and requested the Debt Service budget for FY 2022/23 be provided to Watermaster in early-March.
- Watermaster staff met with the West Yost Associates staff on February 15, 2022 for an Engineering Services budget workshop to discuss the ongoing engineering-related activities required by the Judgment, the Peace Agreements, Court orders, the Basin Plan, as well as other upcoming engineering activities.
- During the period of February through April 2022, Watermaster staff held numerous additional meetings and discussions with staff from West Yost Associates regarding the Engineering Services budget and expected engineering activities for FY 2022/23.
- Watermaster staff has also had numerous meetings and discussions with staff from Brownstein Hyatt Farber Schreck regarding the Legal Services budget and expected legal activities for FY 2022/23 during the period of February through April 2022.
- The Groundwater Recharge Coordinating Committee has met on a quarterly basis to review the anticipated costs of operations and maintenance activities and develop the scope of activities for the upcoming FY 2022/23 budget as recommended by IEUA. The last meeting was held on February 22, 2022.
- The Ground Level Monitoring Committee met on March 3, 2022 to review and recommend a scope and budget for the Ground Level Monitoring Program for FY 2022/23. The Technical Memorandum issued regarding the proposed recommendation for the scope and budget for the Ground Level Monitoring Committee for FY 2022/23 was issued on February 24, 2022.
- The Prado Basin Habitat Sustainability Committee met on March 9, 2022 to review and recommend a scope and budget for the Prado Basin Habitat Sustainability Program for FY 2022/23. The Technical Memorandum issued regarding the proposed recommendation for the scope and budget for the Prado Basin Habitat Sustainability Program for FY 2022/23 was issued on March 2, 2022.
- The Recharge Investigations and Projects Committee RIPComm meets every quarter with most recent quarterly meetings being held on January 20, 2022 and April 21, 2022. The purpose of these meetings is to review ongoing capital projects and future years' capital expense projections, and SRF loan and other financing activities.

From all these various committees and groups, and other inputs from operations staff, Watermaster developed the Proposed FY 2022/23 Budget version dated March 22, 2022 in the amount of \$9,490,976.

On May 19, 2022 the Advisory Committee (by majority vote of 72.141%), approved the Proposed FY 2022/23 in the amount of \$9,490,976.

[FY 2022-2023 Proposed Budget Cover Sheet-20220519.docx \(cbwm.org\)](#)

## DISCUSSION

*Watermaster's function is to administer and enforce provisions of the Judgment and subsequent orders of the Court, and to develop and implement an Optimum Basin Management Program*

On Tuesday, March 22, 2022, Watermaster conducted the Budget Release meeting using Zoom video conference technology, along with the availability for in-person attendance at the Watermaster office. The meeting started at 10:00am and provided an overview of the Proposed FY 2022/23 Budget of \$9,490,976 and provided information on the highlights of the proposed budget.

The presentation provided instruction on where to locate the budget files on the Watermaster website and how they could be reviewed and downloaded, the drivers and how those drivers become expenses, additional commitments, how the budget is developed, budget highlights, various budget comparison tables, the estimated assessment calculation, and future actions.

Attendees at the meeting were requested to email their budget related questions or comments to Joseph Joswiak, similar to the process that has been followed for the last several years. The questions, along with the responses and answers, would be posted to the Watermaster website. No questions were received after the Budget Release meeting.

The Watermaster Budget Workshop #1 was held on Tuesday, April 19, 2022 using Zoom video conference technology, along with the availability for in-person attendance at the Watermaster office. Representatives from West Yost Associates, Brownstein Hyatt Farber Schreck, and IEUA were in attendance at the meeting to discuss and answer any questions related to their specific areas of activities within the proposed budget. The meeting started at 10:00am and the Proposed Budget of \$9,490,976 for FY 2022/23 (March 22, 2022 version) was presented in detail.

The presentation provided instruction on where to locate the budget files on the Watermaster website and how they could be reviewed and downloaded, the drivers and how those drivers become expenses, additional commitments, how the budget is developed, budget highlights, various budget comparison tables, the estimated assessment calculation, and future actions.

A comparison of the proposed budget to the previous year budget was provided. The two Category sections of the budget were described as Judgment Administration and OBMP & Program Elements 1-9, along with the seven Classification sections of Labor/Burden, Legal Services, Engineering Services, Debt Service, Recharge Basin O&M, Recharge Improvement Projects, and All Other Expenses. These seven Classifications were discussed in detail. The methodology of how Watermaster calculates the estimated assessment amounts (Admin and OBMP) along with other items to be on the assessment invoice was provided and explained.

Attendees at the Workshop #1 meeting were requested to email their budget related questions or comments to Joseph Joswiak. The questions, along with the responses and answers, would then be posted to the Watermaster website. On April 19, 2022, Watermaster received written questions from Mr. Justin Scott-Coe of Monte Vista Water District. On April 22, 2022 the Watermaster responses were provided and posted to the Watermaster website.

On April 27, 2022, following Workshop #2, updated responses were provided and posted to the Watermaster website.

Attachment 1: [April 27, 2022 Responses to April 19 2022 email from Justin Scott-Coe \(cbwm.org\)](#)

The Watermaster Budget Workshop #2 was held on Tuesday, April 26, 2022 using Zoom video conference technology, as well as the availability to attend in-person at the Watermaster office. Representatives from West Yost Associates and Brownstein Hyatt Farber Schreck were available on the meeting to discuss and answer any questions related to their specific areas of activities within the proposed budget. The meeting started at 10:00am. Watermaster staff reviewed responses to the MVWD questions submitted earlier and invited any further questions.

On May 2, 2022, a letter from MVWD, the City of Chino, and the City of Ontario to Watermaster, was received. The letter, along with Watermaster comments, was posted on May 4, 2022 to the Watermaster website.

Attachment 2: [May 4, 2022 Comments to May 2, 2022 letter from Ontario, MVWD, Chino \(cbwm.org\)](#)

The Watermaster Budget Workshop #3 was held on Tuesday, May 3, 2022 using Zoom video conference technology, as well as the availability to attend in-person at the Watermaster office. Representatives from West Yost Associates and Brownstein Hyatt Farber Schreck were available on the meeting to discuss and answer any questions related to their specific areas of activities within the proposed budget. The meeting started at 10:00am. The topics discussed were the responses to the April 19, 2022 email from Monte Vista, and the May 2, 2022 joint letter.

The following expense sections are provided for your information with regards to the Approved Fiscal Year 2022/23 budget.

**LABOR AND BURDEN EXPENSE**

The first section of the Approved FY 2022/23 budget relates to Watermaster Labor and Burden. The total Labor and Burden for FY 2022/23 are \$2,523,999 which is \$205,527 or 8.86% above the previous year's Comparison Budget of \$2,318,472. The Full Time Equivalent (FTE) number of Watermaster employees for the Approved FY 2022/23 Budget is 11.0 (FTE) which is the same number of Watermaster employees as the Comparison Budget for FY 2021/22.

	FY 2021/22 Approved Budget	FY 2021/22 Comparison Budget <sup>1</sup>	FY 2022/23 Approved Budget	\$ Variance Approved vs. Comparison	% Variance Approved vs. Comparison
Payroll	\$ 1,352,013	\$ 1,456,332	\$ 1,606,111	\$ 149,779	10.28%
Burden	\$ 818,694	\$ 862,140	\$ 917,888	\$ 55,748	6.47%
<b>Total</b>	<b>\$ 2,170,707</b>	<b>\$ 2,318,472</b>	<b>\$ 2,523,999</b>	<b>\$ 205,527</b>	<b>8.86%</b>
FTEs	10.0	11.0	11.0		

<sup>1</sup> Comparison budget includes all previous budget amendments and changes to Labor and Burden as discussed with the Personnel Committee and approved by the Watermaster Board.

All proposed adjustments to the Labor and Burden expense category are routine and follow past Watermaster practices and policy. Watermaster is using the updated Salary Schedule from FY 2021/22 with a 4.8% Cost of Living adjustment included. There are no new employee benefits being adopted that are additional costs for Watermaster. The FY 2022/23 Staffing Level Chart and Proposed Pay Schedule are located as (Attachment 3) as follows:

Attachment 3: [FY 2022-23 Pay Schedule \\$2,523,999.pdf \(cbwm.org\)](#)

**LEGAL SERVICES**

The second section of the Approved FY 2022/23 budget relates to Watermaster Legal Services. As presented at the March 22, 2022 Budget Release meeting, the Approved FY 2022/23 Brownstein Hyatt

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Farber Schreck budget is \$1,166,098 which is \$193,253 or 19.9% higher than the FY 2021/22 Approved Budget of \$972,845. For comparison purposes, the 5-Year Average (Actual Amounts) for Legal Services total \$1,011,000 compared to the Approved FY 2022/23 budget of \$1,166,098.

The following chart details the Approved Legal Services budget for FY 2022/23 categorized by Watermaster account number. The comparison is between the FY 2022/23 Approved Budget of \$1,166,098 and the FY 2021/22 Approved Budget of \$972,845.

	FY 2021/22 Approved Budget	FY 2022/23 Approved Budget	\$'s Over (Under)
<b>6070 Watermaster Legal Services</b>			
6071 Legal Services - Court Coordination	41,050	74,250	33,200
6072 Legal Services - Rules & Regs	11,925	88,480	76,555
6073 Legal Services - Personnel Matters	9,900	10,300	400
6074 Legal Services - Interagency Issues	39,600	41,616	2,016
6077 Legal Services - Party Status Maintenance	12,500	13,080	580
6078 Legal Services - Miscellaneous	212,000	222,420	10,420
6078.25 Ely 3 Basin Investigation	0	0	0
<b>Total 6070 Watermaster Legal Services</b>	<b>\$ 326,975</b>	<b>\$ 450,146</b>	<b>\$ 123,171</b>
<b>6070 Watermaster Legal Services - Meetings</b>			
6275 Legal Services - Advisory Committee Meeting	24,200	25,432	1,232
6375 Legal Services - Board Meeting	77,220	81,180	3,960
6375.1 Legal Services - Board Briefings/Workshops	12,725	26,750	14,025
8375 Legal Services - Approp. Pool Meeting	30,250	31,790	1,540
8475 Legal Services - Ag. Pool Meeting	30,250	31,790	1,540
8575 Legal Services - Non-Ag. Pool Meeting	30,250	31,790	1,540
<b>Total Watermaster Legal Services - Meetings</b>	<b>\$ 204,895</b>	<b>\$ 228,732</b>	<b>\$ 23,837</b>
<b>6907 OBMP - Legal</b>			
6907.31 Archibald South Plume	10,975	11,505	530
6907.32 Chino Airport Plume	10,975	11,505	530
6907.33 Desalter/Hydraulic Control Issues	33,700	35,420	1,720
6907.34 Santa Ana River Water Rights	18,750	19,620	870
6907.36 Santa Ana River Habitat	27,350	28,660	1,310
6907.38 Reg. Water Quality Control Board	48,850	51,170	2,320
6907.39 Recharge Master Plan	12,500	13,080	580
6907.40 Storage Agreements	51,550	16,155	(35,395)
6907.41 Prado Basin Habitat Sustainability	12,500	13,080	580
6907.44 SGMA Compliance	9,000	9,430	430
6907.45 OBMP Update	81,900	126,200	44,300
6907.47 2020 Safe Yield Reset	40,200	64,620	24,420
6907.48 Ely Basin Investigation	48,850	51,170	2,320
6907.9 WM Legal Counsel - Unanticipated	33,875	35,605	1,730
<b>Total 6907 Watermaster Legal Expenses</b>	<b>\$ 440,975</b>	<b>\$ 487,220</b>	<b>\$ 46,245</b>
<b>TOTAL WATERMASTER LEGAL EXPENSES</b>	<b>\$ 972,845</b>	<b>\$ 1,166,098</b>	<b>\$ 193,253</b>

As with the past practice for the last nine plus years, the Brownstein Hyatt Farber Schreck Legal Services budget has been developed using a formula of assumed hours to complete a specific task multiplied by the hourly rate. Brownstein Hyatt Farber Schreck hourly rates for some staff did increase for the FY 2022/23

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period. Brownstein has provided a detailed memorandum and worksheet which is provided as (Attachment 4) dated March 22, 2022.

Attachment 4: [FY 2022-23 BHFS Legal Services\\_ \\$1,166,098.pdf \(cbwm.org\)](#)

### ENGINEERING SERVICES

The third section of the Approved FY 2022/23 budget relates to Watermaster Engineering Services. The Engineering Services budget is approved at \$3,281,528 which is \$871,640 or 36.2% higher than the Approved FY 2021/22 Budget of \$2,409,888 (which excludes \$573,765 of Carry-Over funding for ongoing projects).

The Engineering Services documents are provided as (Attachment 5) Tables 1 through 4 and (Attachment 6), a 53-page detailed narrative including Rationale, Scope of Work, and Deliverables for each budget category.

Attachment 5: [FY 2022-23 Engineering Services Budget-Tables 1-4\\_ \\$3,281,528.pdf \(cbwm.org\)](#)

Attachment 6: [FY 2022-23 Engineering Services Budget-Narratives.pdf \(cbwm.org\)](#)

Incorporated within the Engineering Services budget of \$3,281,528 is the Ground Level Monitoring Committee recommendations for FY 2022/23. The GLMC recommended a proposed budget of \$502,860 less anticipated "Carry-Over" funding of \$97,267 for a budget amount of \$405,593 for FY 2022/23. Based on the discussions at meetings held by the Ground Level Monitoring Committee, the recommendations and associated budget are shown as (Attachment 7).

Attachment 7: [GLMC Technical Memorandum dated February 24, 2022\\_ \\$405,593.pdf \(cbwm.org\)](#)

The following chart details the Approved Engineering Services budget for FY 2022/23 categorized by Watermaster account number. The comparison is between the FY 2022/23 Budget of \$3,281,528 and the FY 2021/22 Approved Budget of \$2,409,888.



	FY 2021/22 Approved Budget	FY 2022/23 Approved Budget	\$'s Over (Under)
5901.8 · Admin - General Meetings - Eng. Services	0	40,552	40,552
5906.1 · Admin - Watermaster Model Application	0	71,674	71,674
5906.71 · Admin - Misc. Data Requests - CBWM GM/Staff	0	67,710	67,710
5906.72 · Admin - Misc. Data Requests - Non CBWM Staff	0	25,656	25,656
5925 · Admin - Agriculture Production & Estimation	0	57,552	57,552
5935 · Admin - Mat'l Physical Injury Requests-Other	0	81,472	81,472
5945 · Admin - WM Annual Report Prep-Eng. Services	0	15,320	15,320
5965 · Admin - Support Data Collection & Mgmt. Process	0	14,568	14,568
6206 · Advisory Committee-WM Meetings - Eng. Services	0	22,603	22,603
6206 · Board-WM Meetings - Eng. Services	0	22,603	22,603
8306 · Appropriative Pool-WM Meetings - Eng. Services	0	22,603	22,603
8406 · Agricultural Pool-WM Meetings - Eng. Services	0	22,603	22,603
8506 · Non-Agricultural Pool-WM Meetings - Eng. Services	0	22,603	22,603
6901.8 · OBMP - General Meetings - Eng. Services	0	40,553	40,553
6901.95 · OBMP - General Reporting - Eng. Services	0	52,762	52,762
6906 · OBMP Engineering Services - Other	41,896	44,180	2,284
6906.1 · OBMP - Watermaster Model Update	6,112	0	(6,112)
6906.15 · Integrated Model Mtgs-IEUA Cost	31,280	0	(31,280)
6906.21 · State of the Basin Report	0	175,540	175,540
6906.22 · Water Rights Compliance Reporting	17,984	0	(17,984)
6906.23 · SGMA Reporting Requirements	15,598	0	(15,598)
6906.24 · Compliance - SB88 and SWRCB	12,204	0	(12,204)
6906.26 · 2020 OBMP Update	0	276,799	276,799
6906.31 · OBMP - Pool, Advisory, Board Mtgs.	108,000	0	(108,000)
6906.32 · OBMP - Other General Meetings	77,135	0	(77,135)
6906.71 · OBMP - Data Requests - CBWM Staff	133,068	67,710	(65,358)
6906.72 · OBMP - Data Requests - Non CBWM	50,088	25,656	(24,432)
6906.74 · OBMP - Mat'l Physical Injury Requests	77,398	0	(77,398)
6906.81 · Prepare Annual Reports	14,626	0	(14,626)
7103.3 · Grdwtr Qual-Engineering	206,089	0	(206,089)
7103.5 · Grdwtr Qual-Lab Svcs	63,261	0	(63,261)
7104.3 · Grdwtr Level-Engineering	202,793	222,417	19,624
7104.8 · Grdwtr Level-Contracted Services	10,000	10,000	0
7104.9 · Grdwtr Level-Capital Equipment	8,000	8,000	0
7107.2 · Grd Level-Engineering	65,542	0	(65,542)
7107.3 · Grd Level-SAR Imagery	85,000	0	(85,000)
7107.6 · Grd Level-Contract Svcs	86,254	0	(86,254)
7107.8 · Grd Level-Capital Equipment	12,314	0	(12,314)
7108.31 · Hydraulic Control-PBHSP	67,254	0	(67,254)
7108.6 · Hydraulic Control-Outside Professionals	4,500	0	(4,500)
7109.3 · Recharge & Well - Engineering	33,208	0	(33,208)
7110.3 · Agriculture Production & Estimation - Eng. Serv.	14,228	0	(14,228)
7111.3 · Data Collection and Mgmt. - Eng. Services	20,158	0	(20,158)
7202 · Comp Recharge-Engineering Services	0	30,600	30,600
7202.2 · Comp Recharge-Engineering Services	54,764	58,316	3,552
7210 · OBMP - 2023 Recharge Master Plan Scoping	0	212,920	212,920
7220 · Integrated Model Mtg./Technical Review-50% IEUA	0	26,014	26,014
7302 · OBMP - PBHSP Monitoring Program	0	69,937	69,937
7303 · PE3&5-Engineering - Eng. Services	22,284	19,776	(2,508)
7306 · PE3&5-Engineering - Outside Professionals	0	21,750	21,750
7402 · PE4-Engineering	139,806	211,965	72,159
7402.10 · PE4-Northwest MZ1 Area Project	147,031	172,138	25,107
7403 · PE4-Contract Svcs - InSar Services	0	85,000	85,000
7406 · PE4-Contract Svcs - Outside Professionals	0	31,167	31,167
7408 · PE4-Contract Svcs - Network Equipment	0	13,210	13,210
7502 · PE6&7-Engineering	111,916	354,520	242,604
7505 · PE6&7-Lab Services	0	52,513	52,513
7508 · HC Mitigation Plan-50% IEUA (TO #6)	72,000	11,016	(60,984)
7511 · SAWBMP Task Force - 50% IEUA	26,405	23,909	(2,496)
7612 · Review of Storage & Recovery Program - Ad Hoc	0	475,641	475,641
7614 · Support Implementation of Safe Yield Court Order	371,692	0	(371,692)
<b>Total Engineering Services Costs</b>	<b>\$ 2,409,888</b>	<b>\$ 3,281,528</b>	<b>\$ 871,640</b>

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**DEBT SERVICE**

The fourth section of the Approved FY 2022/23 budget relates to Watermaster’s Debt Service. The Approved FY 2022/23 Debt Service budget is \$482,302. The FY 2021/22 budget for this category was \$529,029.

The Debt Service is based upon principal and interest on the (1) 2020A Refunding (2008B Variable Revenue Rate Bonds) totaling \$5.7M for 11 years @ 0.849% and matures in 2032; (2) San Sevaine Improvement (SRF Loan) totaling \$1.5M for 30 years @1.8% and matures in December 2049; and (3) Lower Day Improvement (SRF Loan) totaling \$2.9M for 20 years @ .55% and matures in January 2042. IEUA and Watermaster share the principal and interest expenses on a 50/50 basis. For the FY 2022/23 budget, the Debt Service (account 7690.1) for Watermaster’s 50% portion is budgeted with the following assumptions:

Principal payment:	\$373,813
Interest expenses:	\$206,775
Deferred Amortization adj:	(\$ 96,638)
Financing expenses:	\$ 353
Total Debt Service:	<u>\$482,302</u>

- Watermaster does not budget for any interest rate adjustments(s) for previous years credits.
- The payment for Debt Service is issued annually to IEUA in July.

Current Debt Service			
2020A Refunding (2008B Variable) \$5.7M 11 years @ 0.849% Matures 2032	2022/23 Budget	Funding from CBWM	Funding from IEUA
Principal Payment	\$581,385	\$290,692	\$290,693
Interest Expense	368,747	184,373	184,374
Financial Expense	705	353	352
<b>Total Debt Service</b>	<b>\$950,837</b>	<b>\$475,418</b>	<b>\$475,419</b>
Deferred Amortization adjustment	(197,279)	(96,638)	(96,638)
<b>Debt Service (net of adjustment)</b>	<b>\$753,561</b>	<b>\$376,780</b>	<b>\$376,781</b>
San Sevaine Improvement (SRF Loan) \$1.5M 30 Years @ 1.8% Matures Dec. 2049	2022/23 Budget	Funding from CBWM	Funding from IEUA
Principal Payment	\$61,855	\$30,927	\$30,928
Interest Expense	40,091	20,046	20,045
<b>Debt Service</b>	<b>\$101,946</b>	<b>\$50,973</b>	<b>\$50,973</b>
Lower Day Improvement (SRF Loan) \$2.9M 20 Years @ .55% Matures Jan. 2042	2022/23 Budget	Funding from CBWM	Funding from IEUA
Principal Payment	\$52,194	\$52,194	\$0
Interest Expense	2,356	2,356	0
<b>Debt Service</b>	<b>\$54,550</b>	<b>\$54,550</b>	<b>\$0</b>
<b>TOTAL DEBT SERVICE COSTS</b>	<b>\$910,057</b>	<b>\$482,302</b>	<b>\$427,754</b>

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The current budget details regarding the Debt Service are shown as (Attachment 8).

Attachment 8: [FY 2021/22 Proposed Budget Debt Service and Operations & Maintenance \(cbwm.org\)](#)

**RECHARGE BASIN O&M COSTS**

The fifth section of the Approved FY 2022/23 budget relates to the Recharge Basin O&M expenses which are based upon the Agreement for Operations and Maintenance of Facilities to Implement the Chino Basin Recharge Master Plan. The Recharge O&M expenses are shared costs between IEUA and Watermaster. The pro-rata cost sharing methodology is based on the relative proportion of recycled water to the total water recharged in the basins.

The total FY 2022/23 budget for the Watermaster's portion of the shared costs for Recharge Basin O&M expenses are \$1,101,833. The following details are provided for the O&M costs:

- No adjustments(s) for previous years credits
- Prior year's budget: \$1,067,295

Expense	2022/23 Budget	Funding from CBWM*	Funding from IEUA*
SBCFCD	\$12,000		
CBWCD	2,000		
<i>IEUA – Operations &amp; Maintenance:</i>			
General Basin	799,425		
GWR Administration	621,000		
Specialty O&M	95,000		
Utilities	85,000		
General Allocation (10%)	161,443		
<b>Total</b>	<b>\$1,775,868</b>	<b>\$1,101,833</b>	<b>\$674,035</b>

*Based to Groundwater Recharge Pro-Rate Methodology schedule*

5

The detailed worksheets provided by IEUA for the FY 2022/23 budget are shown as (Attachment 9). Attachment 9: [Pro Rata GWR O&M Cost Sharing Methodology Table-FY2223-draft \(cbwm.org\)](#)

**RECHARGE IMPROVEMENT PROJECTS**

The sixth section of the Approved FY 2022/23 budget relates to the Recharge Improvement Projects which is approved for \$358,000 for the Jurupa Basin Conservation Berm. The FY 2021/22 budget for this category was \$0.

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The current budget details regarding the Recharge Improvement Projects are shown as (Attachment 10).

Attachment 10: [FY 2022-23 Recharge Improvement Project-Jurupa Conservation \\$358,000 \(cbwm.org\)](#)

#### ALL OTHER EXPENSES

The seventh and final section of the Approved FY 2022/23 budget relates to All Other Expenses, or expenses that do not fall into the other six categories. The FY 2022/23 budget for All Other Expenses is \$577,216 which is (\$139,956) lower than the FY 2021/22 budget of \$717,172 or (19.5%).

The components of this section are the administrative expenses which include such items as building expenses, telephone costs, copier leases, office supplies, and postage, IT, auditing, and other consulting services, insurance, dues and subscriptions, travel and transportation expenses, and seminars and conferences.

The complete set of FY 2022/23 detailed documents have been uploaded to the Watermaster website at: [FY 2022-23 Budget Details \(cbwm.org\)](#).

#### ATTACHMENTS

1. 20220512 Budget FY 2022-23 - April 27, 2022 Responses to April 19, 2022 email from Justin Scott-Coe.pdf  
[April 27, 2022 Responses to April 19 2022 email from Justin Scott-Coe \(cbwm.org\)](#)
2. 20220512 Budget FY 2022-23 - May 4, 2022 Comments to May 2, 2022 letter from the City of Ontario, MVWD, the City of Chino.pdf  
[May 4, 2022 Comments to May 2, 2022 letter from Ontario, MVWD, Chino \(cbwm.org\)](#)
3. 20220322 - (2) FY 2022-23 Pay Schedule\_\$2,523,999.pdf  
[FY 2022-23 Pay Schedule\\_\\$2,523,999.pdf \(cbwm.org\)](#)
4. 20220322 - (3) FY 2022-23 BHFS Legal Services\_\$1,166,098.pdf  
[FY 2022-23 BHFS Legal Services\\_\\$1,166,098.pdf \(cbwm.org\)](#)
5. 20220322 - (4) FY 2022-23 Engineering Services Budget-Tables 1-4\_\$3,281,528.pdf  
[FY 2022-23 Engineering Services Budget-Tables 1-4\\_\\$3,281,528.pdf \(cbwm.org\)](#)
6. 20220322 - (5) FY 2022-23 Engineering Services Budget-Narratives.pdf  
[FY 2022-23 Engineering Services Budget-Narratives.pdf \(cbwm.org\)](#)
7. 20220322 - (10) GLMC Technical Memorandum dated February 24, 2022\_\$405,593.pdf  
[GLMC Technical Memorandum dated February 24, 2022\\_\\$405,593.pdf \(cbwm.org\)](#)
8. 20220322 - (7) FY 2022-23 Debt Service and Recharge Basin O&M PPT.pdf  
[FY 2021/22 Proposed Budget Debt Service and O&M \(cbwm.org\)](#)
9. 20220322 - (6) FY 2022-23 O&M Budget\_\$1,101,833  
[Pro Rata GWR O&M Cost Sharing Methodology Table-FY2223-draft \(cbwm.org\)](#)
10. 20220322 - (8) FY 2022-23 Recharge Improvement Project-Jurupa Conservation\_\$358,000.pdf  
[FY 2022-23 Recharge Improvement Project-Jurupa Conservation\\_\\$358,000.pdf \(cbwm.org\)](#)

# Exhibit M

**MINUTES**  
**CHINO BASIN WATERMASTER**  
**WATERMASTER BOARD MEETING**  
May 26, 2022

The Watermaster Board meeting was held at the offices of the Chino Basin Watermaster located at 9641 San Bernardino Road, Rancho Cucamonga, CA, and via Zoom (conference call and web meeting) on May 26, 2022.

**WATERMASTER BOARD MEMBERS PRESENT AT WATERMASTER**

James Curatalo, Chair	Minor Representative
Jeff Pierson, Vice-Chair	Agricultural Pool – Crops
Bob Kuhn, Secretary/Treasurer	Three Valleys Municipal Water District
Bob Bowcock	CalMat Co.
Scott Burton	Monte Vista Water District
Steve Elie	Inland Empire Utilities Agency
Betty Folsom	Jurupa Community Services District
Mike Gardner	Western Municipal Water District

**WATERMASTER BOARD MEMBERS PRESENT ON ZOOM**

Pete Hall	Agricultural Pool – State of CA, CIM
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**WATERMASTER STAFF PRESENT**

Peter Kavounas	General Manager
Joseph Joswiak	Chief Financial Officer
Edgar Tellez Foster	Water Resources Mgmt. & Planning Dir.
Anna Nelson	Director of Administration
Justin Nakano	Water Resources Technical Manager
Frank Yoo	Data Services and Judgment Reporting Mgr.
Ruby Favela	Administrative Assistant
Alonso Jurado	Senior Field Operations Specialist
David Huynh	Senior Field Operations Specialist

**WATERMASTER CONSULTANTS PRESENT AT WATERMASTER**

Scott Slater	Brownstein Hyatt Farber Schreck, LLP
Brad Herrema	Brownstein Hyatt Farber Schreck, LLP
Andy Malone	West Yost

**WATERMASTER CONSULTANTS PRESENT ON ZOOM**

Garrett Rapp	West Yost
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**OTHERS PRESENT AT WATERMASTER**

Bob Feenstra	Agricultural Pool – Dairy
Chris Diggs	City of Pomona
Amanda Coker	Cucamonga Valley Water District
Jiwon Seung	Cucamonga Valley Water District
Chris Berch	Jurupa Community Services District
Bryan Smith	Jurupa Community Services District
Jeff Davis	Provost & Pritchard Consulting
Brian Lee	San Antonio Water Company
Kati Parker	Minor Representative

**OTHERS PRESENT ON ZOOM**

Gino Filippi	Agricultural Pool – Crops
Larry Cain	Agricultural Pool – State of CA
Marilyn Levin	Agricultural Pool – State of CA
Natalie Avila	City of Chino
Dave Crosley	City of Chino

Eunice Ulloa	City of Chino
Ron Craig	City of Chino Hills
Courtney Jones	City of Ontario
Alexis Mascarinas	City of Ontario
Christopher Quach	City of Ontario
Nicole deMoet	City of Upland
Braden Yu	City of Upland
Eduardo Espinoza	Cucamonga Valley Water District
Ben Lewis	Golden State Water Company
Joshua Aguilar	Inland Empire Utilities Agency
Christiana Daisy	Inland Empire Utilities Agency
Shivaji Deshmukh	Inland Empire Utilities Agency
Manny Martinez	Monte Vista Water District
Justin Scott-Coe	Monte Vista Irrigation Company
Justin Scott-Coe	Monte Vista Water District
John Lopez	Santa Ana River Water Company
Todd Minten	Santa Ana River Water Company
David De Jesus	Three Valleys Municipal Water District
Matthew Litchfield	Three Valleys Municipal Water District
Jason Pivovaroff	Western Municipal Water District
Laura Roughton	Western Municipal Water District
Richard Rees	Wood plc

### **CALL TO ORDER**

Chair Curatalo called the Watermaster Board meeting to order at 11:00 a.m.

### **ROLL CALL**

(00:01:39) Ms. Nelson conducted the roll call and announced that a quorum was present.

### **PUBLIC COMMENTS**

None

### **AGENDA – ADDITIONS/REORDER**

None

## **I. CONSENT CALENDAR**

**Note: All matters listed under the Consent Calendar are considered to be routine and non-controversial and will be acted upon by one motion in the form listed below. There will be no separate discussion on these items prior to voting unless any members, staff, or the public requests specific items be discussed and/or removed from the Consent Calendar for separate action.**

### **A. MINUTES**

Approve as presented:

1. Minutes of the Watermaster Board Special Meeting (Workshop No. 1) held April 26, 2022
2. Minutes of the Watermaster Board Meeting held April 28, 2022

### **B. FINANCIAL REPORTS**

Receive and file as presented:

1. Cash Disbursements for the month of March 2022
2. Watermaster VISA Check Detail for the month of March 2022
3. Combining Schedule for the Period July 1, 2021 through March 31, 2022
4. Treasurer's Report of Financial Affairs for the Period March 1, 2022 through March 31, 2022

5. Budget vs. Actual Report for the Period July 1, 2021 through March 31, 2022
6. Cash Disbursements for April 2022 (Information Only)

**C. APPLICATION: WATER TRANSACTION**

Approve the proposed transaction:

The Purchase of 7,500 acre-feet of water from Cucamonga Valley Water District by Fontana Water Company. This purchase is made from Cucamonga Valley Water District's Annual Production Rights. Date of Application: April 4, 2022.

(00:03:52)

*Motion by Vice-Chair Jeff Pierson, seconded by Mr. Mike Gardner, and passed unanimously.*

***Moved to approve the Consent Calendar as presented.***

**II. BUSINESS ITEMS**

**A. WATERMASTER FISCAL YEAR 2022/23 APPROVED BUDGET**

Adopt the Watermaster Fiscal Year 2022/23 Approved Budget as presented.

(00:4:46) Mr. Kavounas prefaced the item and invited Mr. Joswiak to give a presentation. A discussion ensued.

(00:31:52)

*Substitute Motion by Mr. Scott Burton, and there being no second, the motion died*

***Moved to approve Business Item II.A. without the two items for the OBMP Update and send those items back to the Advisory Committee for additional communication.***

(00:37:54)

*Motion by Mr. Pete Hall, seconded by Mr. Steve Elie, and passed by majority.*

***Moved to approve Business Item II.A. as presented.***

**III. REPORTS/UPDATES**

**A. LEGAL COUNSEL**

1. San Bernardino Superior Court Emergency Order
2. April 22, 2022 Hearing
3. Governor's Executive Order N-7-22
4. Kaiser Permanente Lawsuit

(00:49:34) Mr. Slater gave a report. A discussion ensued.

**B. ENGINEER**

1. Safe Yield Data Collection and Evaluation Report
2. Safe Yield Reset Methodology Update
3. Prado Basin Habitat Sustainability Committee Annual Report

(00:57:35) Mr. Malone prefaced the Engineer's Report and invited Mr. Rapp to give a presentation on Items 1 and 2. Mr. Malone informed the Board of the next Safe Yield Peer Review Workshop which will be held on July 20, 2022 from 9am – 12pm at the Watermaster's offices and will also be available remotely.

**C. CHIEF FINANCIAL OFFICER**

None

**D. GENERAL MANAGER**

1. Regional Supply/Drought Update
2. Data Portal Status
3. May 26, 2022 Special Board Meeting (Workshop No. 2)
4. Upcoming Training Opportunity: Roberts Rules of Order
5. Other

(01:09:46) Mr. Kavounas prefaced Item 1 and asked Mr. Aguilar of IEUA to give a presentation. A discussion ensued. Mr. Yoo reported on Item 2. Mr. Kavounas reported on Items 3 and 4 and offered to give a recap of the May 26, 2022 Workshop No. 2 for those who missed it. Mr. Kavounas also announced that Watermaster will be dark in July instead of August this year.

**IV. BOARD MEMBER COMMENTS**

(01:17:59) Vice-Chair Jeff Pierson thanked Watermaster staff for continuing the Watermaster Board Workshops and stated that they were educational. Ms. Folsom echoed Mr. Pierson's sentiments.

**V. OTHER BUSINESS**

None

**VI. CONFIDENTIAL SESSION – POSSIBLE ACTION**

Pursuant to Article II, Section 2.6, of the Watermaster Rules & Regulations, a Confidential Session may be held during the Watermaster Board meeting for the purpose of discussion and possible action.

The Board convened into Confidential Session at 12:21 p.m. to discuss the following:

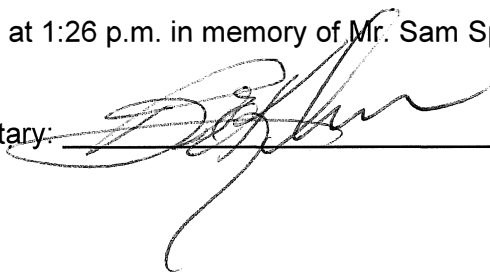
1. General Manager Performance Evaluation

(01:20:27) Confidential Session concluded at 1:20 p.m. with no reportable action.

**ADJOURNMENT**

Chair Curatalo adjourned the Watermaster Board meeting at 1:26 p.m. in memory of Mr. Sam Spagnolo.

Secretary: \_\_\_\_\_



Approved: \_\_\_\_\_ June 23, 2022

Attachment:

1. 20220526 Roll Call Vote Outcome for Business Item II.A.

# ATTACHMENT 1

## May 26, 2022 Watermaster Board Meeting Roll Call Vote Outcome

Member	Alternate	Business Item II.A. (Main Motion)
Burton, Scott	No	
Elie, Steve		Yes
Folsom, Betty		Yes
Gardner, Mike		Yes
Hall, Pete*		Yes
Kuhn, Bob, Secretary/Treasurer		Yes
Pierson, Jeff, Vice-Chair		Yes
Bowcock, Bob		Yes
Curatalo, James, Chair		Yes
	<b>OUTCOME:</b>	<b>Passed by Majority</b>

\*Participated via Zoom



# Exhibit N



# CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, CA 91730  
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

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**PETER KAVOUNAS, P.E.**  
General Manager

## STAFF REPORT

DATE: July 28, 2022  
TO: Board Members  
SUBJECT: 2020 OBMP CEQA Preparation Process (Business Item I.C.)  
SUMMARY:

Issue: Monte Vista Water District, Monte Vista Irrigation Company, City of Ontario and City of Chino ("Four Appropriators") have expressed concerns about the budgeting of expenses that may be incurred pertinent to environmental review of the 2020 OBMP and request that Watermaster direct its General Counsel to prepare a written legal opinion on the justification of inclusion of these expenses in the annual budget. [Within WM Duties and Powers]

Recommendation: In lieu of directing General Counsel to provide an opinion:

1. Direct staff to meet with all interested stakeholders, including the Four Appropriators, to evaluate the current status of the 2020 OBMP, consider changes in circumstances, and gather stakeholder input.
2. Using input from the meetings with stakeholders, develop a project description for the 2020 OBMP PEIR and proceed with the effort within the approved budget.

Financial Impact: N/A

Future Consideration  
**Watermaster Board – July 28, 2022:** Direction to staff

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ACTIONS:  
**Watermaster Board – July 28, 2022:**

*Watermaster's function is to administer and enforce provisions of the Judgment and subsequent orders of the Court, and to develop and implement an Optimum Basin Management Program*

## BACKGROUND

The development of an OBMP is a discretionary power reserved to the Watermaster.

In 1998 the Court directed the commencement of an OBMP and the Inland Empire Utilities Agency began preparation of a Programmatic Environmental Impact Report (“PEIR”). Technical support of this effort, including work by Wildermuth Environmental, was in part, supported by assessments levied in accordance with the Judgment’s procedures.

In June of 2000 the Peace Agreement and a suite of projects under an OBMP Implementation Plan were approved by Parties to the Judgment. Subsequently, the Peace Agreement, the OBMP Implementation Plan and the OBMP were all approved by the Court and Watermaster was ordered to proceed in accordance with their terms. The certification of the Programmatic EIR for the 2000 OBMP was a condition for Court approval of the Peace Agreement.

The 2000 OBMP was first supplemented in 2007 in connection with the adoption of the Peace II Agreement, again with environmental review being completed by IEUA, with technical support from Wildermuth Environmental being funded by Watermaster Assessments. Further updates by way of two Addenda to the 2000 OBMP Programmatic EIR were completed in 2017 and again in 2021 allowing the study of effects local storage and leading to the Local Storage Limitation Solution (“LSLS”).

The existing PEIR is 22 years old and is stale for purpose of addressing current conditions in a manner sufficient to secure State and Federal funding and to properly inform the Court, the parties to the Judgment, and the public generally of potential environmental impacts attributable to new projects. Before embarking on new implementation measures a refreshed environmental review can address current conditions and include or enable subsequent project level approval for the benefit of basin stakeholders.

A draft Subsequent Environmental Impact Report on the 2020 OBMP was prepared in 2020, however IEUA resolved not to certify it because of concerns expressed by one stakeholder, resulting in a shift in focus to approving only environmental coverage of the LSLS. Ultimately, the LSLS was approved by Watermaster and the Court in 2021.

The State of California is currently facing record shortage conditions. The California State Water Project is meeting only 5% of contractor demands, the Bureau of Reclamation has declared shortage conditions on the Colorado River for the first time in history, the Metropolitan Water District has imposed water conservation mandates as has the California State Water Resources Control Board. Moreover, the Inland Empire continues to require water for the people and economy. Cooperative regional solutions like the OBMP play a critical role in meeting these needs.

According to the Restated Judgment the budget for annual Watermaster expenses is approved by the Advisory Committee (AC) and adopted by the Board; the effort to complete the 2020 OBMP CEQA documentation is budgeted in FY 2022/23, was approved by AC and adopted by Watermaster Board in May 2022.

Watermaster’s power to levy assessments is derived from the Judgment. Assessments are levied in November after the Assessment Package is approved by the Board. While the effort to complete CEQA review for the 2020 OBMP is included in the FY 2022/23 Budget, no assessments have yet been levied for these budgeted costs.

## DISCUSSION

### Four Appropriator Position

On May 2, 2022 the Four Appropriators wrote to CFO Joe S. Joswiak concerning the FY 2022/2023 budget regarding the inclusion of “scoping items related to implementation of projects” included in the

*Watermaster’s function is to administer and enforce provisions of the Judgment and subsequent orders of the Court, and to develop and implement an Optimum Basin Management Program*

OBMP 2020 Update Report, which was adopted by the Board in October of 2020 (Attachment 1.) The letter references the timing of potential expenditures in the amount of \$276,799 arising from a proposed scope of work related to environmental review, technical work and legal support and objects to the items being included in the budget.

The principal grounds for objecting to inclusion of the expenses in the budget are that if amendments to the Peace Agreement and the Implementation Plan are proposed, they require unanimous consent, and that Watermaster is not a public agency with CEQA responsibilities and therefore expenditures of funds are not appropriate.

The Four Appropriators believe that CEQA review is not warranted before an OBMP Implementation Plan (IP) update is drafted first and a Peace Agreement Amendment is negotiated, and believe it is better to reconvene the IP drafting process first;

On May 25, 2022 the Four Appropriators again wrote in follow-up to the May 2, 2022 letter desiring a response to the questions posed therein and further requesting a "Written Opinion from Watermaster General Counsel that identifies both the CEQA "project" description and provision(s) in the Chino Basin Judgment and/or Peace Agreements, and any other agreement among the parties to the Judgment which authorizes such expenditures." (Attachment 2.)

The Four Appropriators further expressed a concern that funding CEQA consultants to develop information that might be used by IEUA in preparing a CEQA document is a "conflict of interest" if IEUA is a proponent of an OBMP project that requires Watermaster approval under the Judgment. Thus, they request a written legal opinion of Watermaster General Counsel as to whether this funding would create a conflict of interest.

The Four Appropriators repeated their request for a written legal opinion in a third letter, dated June 21, 2022 (Attachment 3.)

#### Watermaster Response

Watermaster staff and Counsel have responded to the above concerns on several occasions during the annual budget review and approval process and beyond. In summary the response is that the contemplated CEQA analysis is broad and intended to enable any management actions and projects the parties might agree to implement at a later time, and may also include project level analysis where there is specific agreement to proceed. In addition to facilitating the update of the OBMP Implementation Plan, the cumulative CEQA analysis streamlines future project-specific analyses and also creates a contemporary CEQA analysis for grant applications.

The 2020 OBMP is a broad management plan for Chino Basin for the next 20 years that was written as an update to the 2000 OBMP through an extensive stakeholder engagement process. It is envisioned that many projects could be conceived by the parties from this planning document and a project-specific EIR would need to be prepared before a specific project can be implemented by any party to the Judgment. Such environmental review may be included with the final 2020 OBMP CEQA documentation or may be tiered off of this analysis at a later time.

The adoption of an OBMP by Watermaster is not a "project" for purposes of CEQA. However, the physical projects carried out under the OBMP may be. This is abundantly clear. One of the historical problems solved by the OBMP PEIR was to put all pertinent potential projects on the table for programmatic evaluation, to reduce friction and infighting over competition for a limited set of dollars and resources and legal roadblocks to project completion.

Parties to the Peace Agreement may wish to update the OBMP Implementation Plan and possibly amend the Peace Agreement to move forward with implementation of management activities and projects they

may agree on. The environmental analysis for the 2020 OBMP will provide information to the parties and thus facilitate negotiations.

Since the time the Project Description for the 2020 OBMP PEIR was drafted in 2020, Program Element 8 – Storage has been addressed in a separate CEQA document (Second Addendum to the 2000 OBMP PEIR) and other projects (e.g. IEUA’s Chino Basin Program) have also certified CEQA documentation. As a result, the project description for CEQA review of the 2020 OBMP needs to be reviewed.

Following discussions with the Watermaster Board staff included funds in the proposed FY 2022/23 budget to assist the parties, if requested, in developing an updated OBMP Implementation Plan and negotiating an update to the Peace Agreement, and to review and update the 2020 OBMP environmental review documentation so it can be considered by the IEUA Board of Directors. The estimated expense for these efforts is as follows:

Engineering Services 6906.26	2020 OBMP Implementation Plan	\$15,282
	Support PA Amendment	\$15,282
	2020 OBMP CEQA	\$246,235
	Total:	\$276,799
Legal Services 6907.45	Budget for all 3 components:	\$126,000

Prior to its approval by the Watermaster Board, the budget was approved as presented by majority vote of the Advisory Committee, with the Four Appropriators in opposition.

Watermaster also has an obligation to ensure that CEQA has been performed as a precondition to processing and approving certain discretionary decisions under the Judgment, Peace Agreement, and Watermaster Rules and Regulations. The Peace Agreement recites and provides for IEUA to perform environmental review functions for the 2020 OBMP. It has undertaken this responsibility for the convenience of the parties on multiple occasions, e.g. Dry-Year Yield, Basin-Re-Operation – Hydraulic Control; Storage Addendums. Further, regardless of CEQA, it has an obligation to conduct an analysis of Material Physical Injury of qualifying projects and actions under the Peace Agreement and Court order. Consequently, it is reasonable, natural, and efficient for Watermaster to offer its technical expertise and services to IEUA, where IEUA is preparing an EIR to facilitate Watermaster functions.

While the Four Appropriators prefer a narrower and more restricted approach, the majority of the stakeholders, as expressed in the Advisory Committee vote to approve the budget, disagree. The Judgment provides clear instruction on the approval of the budget.

The Four Appropriators asked for an extension of time during which to challenge Watermaster’s adoption of the budget that was approved by the Advisory Committee. Watermaster has agreed to extend the Judgment period for challenging the Budget from 60-days to a date certain, 30 days from the July 28, 2022 Special Board meeting to allow for more discussion.

Staff believes that instead of preparing a legal opinion as requested, further discussion with stakeholders whereby we make it clear that no technical expenditures will proceed in advance of re-examining the scope of the 2020 OBMP and the inclusion or exclusion of additional projects and implementation measures at a programmatic and potentially a project level is advisable. Consequently, staff is proposing, and seeking direction from the Board to proceed with, a process to obtain input from all stakeholders to revise the CEQA documentation Project Description and to develop a work plan while honoring the Peace Agreement and the Judgment. This will allow time to discuss and clarify the proposed CEQA document preparation as well as address other concerns.

The act of budgeting for a future event that is likely to occur within the next fiscal year does not constitute a commitment to any specific outcome to implement a change, modify the Peace Agreement, or the

*Watermaster’s function is to administer and enforce provisions of the Judgment and subsequent orders of the Court, and to develop and implement an Optimum Basin Management Program*

Implementation Plan. As was the case with the LSLS, new commitments vitiated the need for altering previous ones in a manner that required unanimous consent of the Parties. New subject matter is not necessarily subject to the limitations of the Peace Agreement.

Watermaster can both establish a budget for an expected action, requiring technical support, while reserving to its discretion, to the extent it exists under the Judgment and Peace Agreement, and likewise to the parties to the Judgment to address any action that Watermaster may take when there are clear facts before us.

#### ATTACHMENTS

1. May 2, 2022, letter from the Four Appropriators to Joe Joswiak subject "Chino Basin Watermaster, Fiscal Year 2022/23 Draft Budget"
2. May 25, 2022, letter from the Four Appropriators to Watermaster Board Members subject "Chino Basin Watermaster, Fiscal Year 2022/23 Draft Budget"
3. June 21, 2022, letter from the Four Appropriators to Watermaster Board Chair Curatalo subject "Chino Basin Watermaster, Fiscal Year 2022/23 Draft Budget"



May 2, 2022

Joseph S. Joswiak, MBA  
Chief Financial Officer  
Chino Basin Watermaster  
9641 San Bernardino Road  
Rancho Cucamonga, CA 91730



**Chino Basin Watermaster, Fiscal Year 2022/23 Draft Budget**

Dear Mr. Joswiak:

The Cities of Ontario (Ontario) and Chino (Chino) and Monte Vista Water District (MVWD) appreciate the opportunity to review and provide input on the Watermaster Fiscal Year (FY) 2022/23 Draft Budget.

The proposed FY 2022/23 budget includes scoping items related to implementation of projects included in the Optimum Basin Management Program (OBMP) 2020 Update Report, which was completed and adopted by the Watermaster Board on October 22, 2020. During the process of Watermaster developing the OBMP Update Report, with input from the Parties, it was understood that the next steps for implementation would require agreement by the Parties. This was confirmed by Watermaster's Summary of Engineering Services and Costs for the Budget: "Furthermore, to implement the 2020 OBMP Update, the parties must update the 2000 OBMP Implementation Plan and amend the Peace Agreement." Under Section 10.14, amendments to the Peace Agreement require unanimous consent. With that in mind, it was understood that this agreement must be completed prior to any further OBMP related work, in line with past practice. If Watermaster intends otherwise, please provide justification.

Watermaster initiated a process to facilitate an update to the OBMP Implementation Plan (IP) through an amendment to the Peace Agreement. A Drafting Session Orientation was held on March 2, 2020, and the first OBMP IP Drafting Session was held on March 16, 2020. The process was put on hold after the first working meeting and has yet to resume.

The proposed scope of work totals \$276,799 for environmental review and other technical work (account 6906.26) along with \$126,200 for legal support (account 6907.45). Watermaster staff has repeatedly stated that this work is discretionary. Further, CEQA review, and Watermaster expense to support it, is not warranted prior to an agreement on the Implementation Plan and Peace Agreement Amendment. While the parties to the Peace Agreement sanctioned CEQA review of the then-agreed-to project elements, CEQA authorization under Section 2.2 of that Agreement does not extend to future projects to which agreement has not been reached. Watermaster's own


discretionary activities to develop an optimum basin management program, as part of the Judgment's physical solution, are not subject to CEQA review and hence is not a justification for such expense.

While the Parties could all agree to proceed with this scope of work, Ontario, Chino, and MVWD believe a better approach is to reconvene the IP drafting process in advance of any additional scoping and budget. This will allow the Parties responsible for implementation to first develop the scope of implementation and negotiate an amendment to the Peace Agreement, then study the environmental impacts as needed. This process is in line with what Watermaster stakeholders have already committed to complete – an agreement for the implementation.

Ontario, Chino, and MVWD are also seeking clarification from Watermaster whether it intends to implement the budgeted discretionary work either upon a simple majority budget approval of the Advisory Committee or upon approval by all Parties. If the former, please provide a legal explanation of Watermaster's authority to impose this onto the Parties to the Peace Agreement.

Thank you for your time and consideration.

Sincerely,



Courtney Jones  
City of Ontario Water Resources and Regulatory Affairs Director



Justin Scott-Coe  
Monte Vista Water District General Manager



Dave Crosley  
City of Chino Utilities Engineering and Operations Manager

cc: Peter Kavounas, General Manager, Chino Basin Watermaster

Eduardo Espinoza, Chair, Appropriative Pool Committee





May 25, 2022

Chino Basin Watermaster  
9641 San Bernardino Road  
Rancho Cucamonga, CA 91730

**Chino Basin Watermaster, Fiscal Year 2022/23 Draft Budget**

To Watermaster Board Members:

The cities of Ontario and Chino and Monte Vista Water District are following up on their letter of May 2, 2022, which questioned the inclusion of expenditures for Optimum Basin Management Program (OBMP) Update California Environmental Quality Act (CEQA) review in the 2022/23 Draft Budget. While we received written comments from Mr. Kavounas and spoke with Watermaster Counsel, which we appreciate, we have not received an explanation of the legal basis for such expenditures. We have been repeatedly told by Watermaster that CEQA review, and associated Watermaster expenditures, would follow an Implementation Plan and Agreement by the parties to the Peace Agreement. Similarly, Watermaster Counsel acknowledged, and we agree, that there is a need to revisit the “project” description in the pending Inland Empire Utilities Agency (IEUA) CEQA analysis.

Accordingly, we hereby request a Written Legal Opinion from Watermaster Counsel that identifies both the CEQA “project” description and the provision(s) in the Chino Basin Judgment and/or Peace Agreements, and/or any other agreement among the parties to the Judgment, which authorizes such expenditures. We understand from recent communications with Watermaster Counsel that Watermaster is not a public agency but rather an extension of the Superior Court, and hence not authorized to conduct CEQA review. We agree with that statement and conclusion. However, that statement and conclusion suggest that CEQA review and associated expenditures require agreement by all parties to the Judgment – the procedure followed by the Peace Agreement.

It also appears that Watermaster intends to finance, by funding the CEQA consultants (Dodson and West Yost) and CEQA attorneys, the efforts of IEUA as the Lead CEQA agency when IEUA itself is a proponent of an OBMP project that requires Watermaster approval under the Judgment. This would appear to present a conflict of interest. We request that the Legal Opinion address this perceived conflict of interest.

We appreciate your attention to this important matter in the belief that you share our desire to ensure that all expenditures within the draft budget are legally justified.

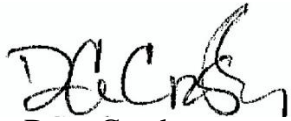
Sincerely,



Courtney Jones  
City of Ontario Water Resources and Regulatory Affairs Director



Justin Scott-Coe  
Monte Vista Water District General Manager



Dave Crosley  
City of Chino Utilities Engineering and Operations Manager

cc: Peter Kavounas, General Manager, Chino Basin Watermaster  
Eduardo Espinoza, Chair, Appropriative Pool Committee



June 21, 2022

Chino Basin Watermaster Board  
9641 San Bernardino Road  
Rancho Cucamonga, CA 91730

**Re: Chino Basin Watermaster, Fiscal Year 2022/23 Budget**

Dear Chair Curatalo:

The Cities of Ontario (Ontario) and Chino (Chino) and Monte Vista Water District (MVWD) are following up on our May 2, 2022 letter, which is attached. Ontario, Chino and MVWD request Watermaster act on our letter by directing Watermaster legal counsel to provide a legal opinion regarding Watermaster's authority to impose costs, associated with the FY 2022/23 budgeted discretionary work within accounts 6906.26 & 6907.45, onto the Parties to the Peace Agreement by majority vote.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Courtney Jones".

Courtney Jones  
City of Ontario Water Resources and Regulatory Affairs Director

A handwritten signature in black ink that reads "Justin Scott-Coe".

Justin Scott-Coe  
Monte Vista Water District General Manager

A handwritten signature in black ink that reads "Dave Crosley".

Dave Crosley  
City of Chino Utilities Engineering and Operations Manager

cc: Peter Kavounas, General Manager, Chino Basin Watermaster  
Eduardo Espinoza, Chair, Appropriative Pool Committee

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

PROOF OF SERVICE

I declare that:

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

On October 3, 2022 I served the following:

1. DECLARATION OF PETER KAVOUNAS IN SUPPORT OF CHINO BASIN WATERMASTER'S OPPOSITION TO MOTION CHALLENGING WATERMASTER'S BUDGET ACTION TO FUND UNAUTHORIZED CEQA REVIEW

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

**See attached service list:** Master Email Distribution List

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

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

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

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

Executed on October 3, 2022 in Rancho Cucamonga, California.

  
\_\_\_\_\_  
By: Ruby Favela Quintero  
Chino Basin Watermaster

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11248 S TURNER AVE  
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JEFF PIERSON  
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