

Memorandum

DATE: March 22, 2022
TO: Watermaster Staff
FROM: Brownstein Hyatt Farber Schreck, LLP
RE: FY 2022-2023 Legal Counsel Budget Detail and Analysis

This worksheet has been prepared at your request so as to provide additional detail regarding the expected legal fees and costs that will be incurred if Watermaster implements its responsibilities under the Restated Judgment, pending Court Orders, including as to the Peace I and Peace II Agreements, and the Optimum Basin Management Program (OBMP). The Nine Member Board is expected to implement these measures. Additional fees and costs may be incurred in connection with actions that are within Watermaster's duties and implementation authority but outside the control of staff and counsel. That is, Parties to the Restated Judgment and persons not bound by the Restated Judgment may initiate actions that require a response from Watermaster.

This worksheet utilizes the original budget as proposed by legal counsel in March of 2022, and will be updated, as necessary, so that any adjustments in the budgeted amount can be made considering actual projections concerning time and level of activity associated with anticipated budget line items. The experience of Watermaster over the past more than twenty years since Brownstein Hyatt Farber Schreck (Brownstein) was retained as counsel provides a basis for the budget based upon a customary level of activity. These services are included within the budget as requested to provide service as legal counsel to the Board. Thus, the proposed budget amount analyzed below is \$1,166,098, which includes a roughly \$36,000 allocation for unanticipated activities.

Budget Assumptions: The number of hours expended to provide the desired level of service is the primary factor in legal counsel expense. The budgeted amount includes reimbursement for out of pocket costs that include phone charges, electronic legal research charges, travel costs (including mileage, lodging, etc.) and other incidental costs. While these costs traditionally vary from month to month, they do not constitute a material portion of the budget. Typically, 2-5% of a monthly bill is cost recovery.

Brownstein has represented Watermaster for over 20 years and consequently, as a matter of Brownstein policy, Watermaster enjoys a continuing and gradually steepening discount against standard rates. In some cases, the discount approaches 45%. As a further accommodation to Watermaster and its favored status, Brownstein maintains a 10% discount on all fees over \$100,000 as part of our original contract with Watermaster. When spread over the entirety of the Brownstein fees, this discount results in an approximately 8.5% discount on all fees whenever incurred.

Rather than attempting the detailed analysis that would be required to project which budget items would be affected by this discount, and which out-of-pocket cost items might be relevant to which budget items, the budget detail below uses a simple multiplier of time spent against rates for each attorney. This has the effect of creating an approximate 6% cushion in the estimates provided below assuming that the cost ration from recent bills is representative (i.e., 8.5% - 2.5% = 6%).

Slater and Herrema are the principal lawyers assigned to the Watermaster matter. Over the years, Slater's activities are generally reserved to Watermaster Board meetings, assignments directed by the Board, and task driven.

Definition of "unanticipated expenses": For the purposes of this memorandum, "unanticipated expenses" refers to an amount of money that is budgeted to account for legal issues that may arise post budget approval that were not anticipated in the budget, or to account for underestimates in the budget for the anticipated matters as a result of unforeseen complexity. Historically, the Watermaster budget preference had been to under fund all parts of the budget, including contingency, so as to not create an expectancy of the higher expenditure. Experience suggests that the Watermaster Board and the Parties to the Restated Judgment have been more comfortable with assigning additional funding to a matter after the actual need has been identified. Such funds whose use requires a Board-approved budget transfer/amendment are sometimes identified as "contingency." This analysis uses the term "unanticipated expenses" in the first sense to refer to an amount of money that is budgeted to account for unanticipated expenses.

Detail articulated below includes:

Regular Meeting Attendance	\$201,982
Board Briefings/Workshops	\$ 26,750
Court Coordination	\$ 74,250
Rules and Regs Rewrite	\$ 88,480
Personnel Matters	\$ 10,300
Interagency and Miscellaneous	\$264,036
Party Status Maintenance	\$ 13,080
Total:	\$678,878

Regular Meeting Attendance (6275, 6375, 8375, 8475, 8575) \$201,982

Assumptions: Three meeting days per month staffed by one attorney per meeting. Assumed hours commitment of 5 hours per Pool Committee meeting and 4 hours per Advisory Committee meeting, inclusive of attendance, travel and preparation. Assumption of regular attendance by Slater at the Board meeting (12 hours x 11 months = 132 hours), and by Herrema at Pool Committees and Advisory Committee (5 hours x 3 pool committees x 11 months + 4 hours x 11 months = 209 hours) for an approximate total of \$201,982.

Board Briefings/Workshops (6375.1) \$ 26,750

Over the past few years, Watermaster staff and legal counsel have conducted Board Briefings to provide Board members with information as to the legal background for Watermaster's activities, the functions of the Pool Committees, Advisory Committee and Board, the role of Watermaster staff and current issues. Given the inability to hold in-person briefings and workshops over the past two years, and the influx of new Board members, this budget assumes that one or two briefings or workshops will take place in FY 2022-2023. Responsibility for this task is shared by Slater (20 hours) and Herrema (25 hours) for an approximate total of \$26,750.

Court Coordination (6071)

Activities:

(1) Regular court hearings \$ 74,250

Judge Reichert has indicated that he may retire in mid-2022. Based on our experience with past changes in the judicial assignment of the Watermaster matter, we anticipate an increased level of effort in 2022-2023 in regard to interactions with the Court. Other items included in the budget suggest the possibility of at least two hearings, so this item is budgeted at two additional hearings. Given that Court hearings require

more preparation than regular monthly meetings, this category assumed an hour commitment of 30 hours per hearing inclusive of attendance, travel and preparation of reports or other filings. This category assumes one attorney per hearing, though it is often necessary to staff a hearing with more than one attorney. Responsibility for this task is shared equally between Slater (50 hours) and Herrema (50 hours) with assistance from associate attorney Laura Yraceburu or an equivalent billing attorney (40 hours) for an approximate total of \$74,250.

(2) Rules and Regulations Rewrite (6072) \$ 88,480

Watermaster Board has directed that the Rules and Regulations be reviewed for any necessary updates every other year. As Watermaster updated the Rules and Regulations in FY 2021-2022 following the completion of the LSLs, there would be no planned update during FY 2022-2023. However, certain Parties have requested that Watermaster undertake a wholesale rewrite of the Rules and Regulations. This budget item presents the level of effort for such a rewrite. Responsibility for this task is shared by Slater (40 hours), Herrema (60 hours), and Yraceburu (80 hours) for an approximate total of \$88,480.

Personnel (6073) \$ 10,300

It is not anticipated that any significant personnel issues will arise in FY 2022-2023, though some level of activity is the norm in any year. Thus, we have proposed a nominal budget for this item for employment and benefits counsel, Christine Samsel and Nancy Strelau of 20 hours, and an approximate total of \$10,300.

Interagency Issues and Miscellaneous (6074 and 6078) \$264,036

There are always a variety of day-to-day matters that arise throughout a month concerning questions that require interpretation of the Restated Judgment, Rules, agreements, etc. Herrema (190 hours) is the attorney responsible for these matters, with assistance from Slater (100 hours) and Yraceburu (140 hours), with an approximate cost of \$222,420.

To the extent that agreements between the parties arise, there will likely be a nominal involvement from legal counsel. In addition, it is likely that several interagency agreements will be required in FY 2022-2023 as in past years. These activities assume the work will be done by Herrema (72 hours) for an approximate total of \$41,616.

Party Status Maintenance (6077) \$ 13,080

In each year, there is a small amount of work to do to regarding the proper placement of parties in Pools and the Pool and party rosters. The proposed budget assumes working with Watermaster staff to undertake this clean-up. The proposed budget assumes that Herrema will be the primary attorney assigned to this task (10 hours) with assistance from Yraceburu (20 hours), for an approximate total of \$13,080.

Archibald South Plume (6907.31) \$ 11,505

The proposed budget assumes that Slater will be the primary attorney assigned to the task of any necessary ABGL facilitation (5 hours) with input from Mark Mathews (5 hours) and involvement from Herrema (10 hours) for an approximate total of \$11,505.

Chino Airport Plume (6907.32) \$ 11,505

The proposed budget assumes that Slater will be the primary attorney assigned to the task of any facilitation related to the Chino Airport Plume (5 hours) with input from Mark Mathews (5 hours) and involvement from Herrema (10 hours) for an approximate total of \$11,505.

Desalter/Hydraulic Control Issues (6907.33) \$ 35,420

Regional Water Quality Control Board (6907.38) \$ 51,170

Given the significance of the Desalter and Hydraulic Control issues to the OBMP, legal counsel believes it is appropriate to expect continuing activity on this issue continuing into FY 2022-2023 – specifically in light of the reduced groundwater production in areas of the Basin due to water quality concerns. Given his participation in the CDA facilitation, Slater will be the primary attorney (20 hours) with assistance from Herrema (40 hours), for an approximate total of \$35,420.

Regarding the Regional Water Quality Control Board, we expect that there will be a proposed Basin Plan Amendment during FY 2022-2023 related to the revision to the Salt and Nutrient Management Plan. On this matter, Slater will provide (10 hours), Herrema (40 hours), and Yraceburu (60 hours) for an approximate total of \$51,170.

Santa Ana River Water Rights (6907.34) \$ 19,620

Legal counsel is currently completing a process to extend the time in which Watermaster must seek to license its water right permit numbers 19895 and 20753 – a substantial amount of work was completed on this in FY 2017-2018, and additional progress has been made in FY 2021-2022 but it is likely that the SWRCB’s processing will not be completed until FY 2022-2023. SWRCB staff have requested additional information in order to complete this process. Watermaster additionally is required to complete annual reporting to the Department of Fish and Wildlife and the SWRCB regarding its diversions under its permit 21225. In addition, given the history on the Santa Ana River it is prudent to account for some level of activity regarding water rights on the River. Work under this budget item is split 1/3 Herrema (15 hours) and 2/3 Yraceburu or an equivalent billing attorney (30 hours) for an approximate total of \$19,620.

Santa Ana River Habitat Conservation Plan (6907.36) \$ 28,660

There is an increased level of interest in species issues on the Santa Ana River. These include the development of a Habitat Conservation Plan for certain activities within the watershed, potential environmental review related to the SARCCUP, as well as litigation related to diversions and operations within the River. These issues touch on Watermaster’s interests in the River, including its stormwater diversions in the Prado Basin watershed and the Prado Basin Habitat Sustainability Committee activities. The Parties and the Board have shown an interest in continuing to be kept abreast of these developments and we anticipate work related to the implementation of the HCP and the formation of the entity responsible for implementation in FY 2022-2023. It is anticipated that the effort in this regard will be spread among Slater (10 hours), Herrema or equivalent attorney (20 hours), and Yraceburu (30 hours) for an approximate total of \$28,660.

Recharge Master Plan (6907.39) \$ 13,080

Watermaster is required to complete the required Update to the Recharge Master Plan no later than October 2023. This will require the completion of the Update document, approval by the IEUA and Watermaster Boards, as well as Court approval. Though the deadline for Court approval is not until October 2023, much of the work must take place in 2022-2023. It is anticipated that the effort in this regard will be spread among Herrema (10 hours) and Yraceburu or an equivalent billing attorney (20 hours) for an approximate total of \$13,080.

Storage Agreements (6907.40) \$ 16,155

At present, storage agreements are updated as necessary to reflect increases in storage balances following end of the year accounting. This is anticipated to occur again in FY 2022-2023, possibly utilizing the draft “evergreen” storage agreement forms that are now under review by the parties. Additionally, it is anticipated that Watermaster may be addressing and processing one or more Storage and Recovery applications in FY 2022-2023. In working with the Parties to address these issues, it is anticipated that Slater will provide (5 hours), Herrema (10 hours), and Yraceburu or an equivalent billing attorney (20 hours) for an approximate total of \$16,155.

Prado Basin Habitat Sustainability (6907.41) \$ 13,080

The Peace II Subsequent Environmental Impact Report includes mitigation requirements as to the development of a Prado Basin Habitat Sustainability Committee and Program be developed. Watermaster and IEUA have entered into a cost sharing agreement as to the required mitigation and Watermaster will have ongoing obligations thereunder. It is anticipated that Herrema will provide (10 hours) and Yraceburu (20 hours) for an approximate total of \$13,080.

SGMA Compliance (6907.44) \$ 9,430

Based on the Chino Basin’s adjudicated status, Watermaster has certain obligations to annually report information to DWR. It is anticipated that there will also be a minimal amount of work associated with

tracking and evaluating how new SGMA directives may affect the Basin or suggest changes to Basin management. This will include work by Herrema (10 hours) and Yraceburu or an equivalent billing attorney (10 hours) for an approximate total of \$9,430.

OBMP Update (6907.45)

\$ 126,200

The Watermaster Board approved the 2020 OBMP in October 2020. The LSLs was approved in July. Work in 2022-2023 would include revision of the OBMP Implementation Plan, finalizing CEQA review, and seeking and obtaining necessary court approvals. This effort would include work by Slater (40 hours), Herrema (100 hours) and Yraceburu or an equivalent billing attorney (120 hours) for an approximate total of \$126,200.

2021 Safe Yield Reset (6907.47)

\$ 64,620

The Court's 2017, 2019, and 2020 orders as to future Safe Yield resets include processes for potential update to the reset methodology, peer review, and the outcome of the State's process regarding water use efficiency requirements. There will be work in FY 2022-2023 associated with the implementation of these orders. This will include work by Slater (20 hours), Herrema (40 hours), and Yraceburu or an equivalent billing attorney (80 hours) for an approximate total of \$64,620.

Ely Basin Litigation (6907.48)

\$ 51,170

Watermaster has been brought in as a defendant in the Kaiser Permanente plaintiffs' lawsuit. A trial setting conference is set for July 1, 2022, and the parties have been ordered to mediation the second quarter of 2022. It is expected that this will continue during FY 2022-2023 unless a resolution is reached during this mediation process. For this item, it is anticipated that it will include work by Slater (10 hours), Herrema or litigation counsel (40 hours) and Yraceburu or an equivalent billing attorney (60 hours) for an approximate total of \$51,170.

Unanticipated Activities (6907.9)

\$ 35,605

Regarding the unanticipated activities that may occur during the year (please see the discussion on page 1, above), Slater has been budgeted at (25 hours) and Herrema is budgeted (35 hours) for an approximate total of \$35,605.

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