FEE EXEMPT

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City of Ontario

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCVRS 51010

[ASSIGNED FOR ALL PURPOSES TO THE HONORABLE GILBERT G. OCHOA]

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF ONTARIO'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS

Hearing:
Date: October 31, 2025
Time: 10:00 a.m.
Dept: R-17

Pursuant to California Evidence Code sections 452 and 453, City of Ontario ("Ontario") respectfully submits this Request for Judicial Notice in Support of Motion for Award of Attorney's Fees and Costs, filed concurrently herewith.

This Court may take judicial notice of the pleadings, court minutes, and court transcripts, as they are records of the Court. Cal. Evid. Code § 452(d) (allowing courts to judicially notice "[r]ecords of any court of this state"); *see also In re Clark*, 5 Cal. 4th 750, 798 fn. 35 (1993) (taking judicial notice of court's own records); *see also Shine v. Williams-Sonoma, Inc.*, 23 Cal. App. 5th 1070, 1076-77 (2018) (the trial court properly exercising discretion to take judicial notice of prior case's pleading, settlement agreement, and stipulated judgment of dismissal for purposes of collateral estoppel).

Further, Evidence Code section 452 allows a court to take judicial notice of certain matters of law and fact, including the official acts of a public agencies and the state. (Evid. Code, § 452(c) *Estate of Will*, 170 Cal. App. 4th 902, 908 (2009); *Rodas v. Spiegel*, 87 Cal. App. 4th 513, 518 (2001) (noting that "official act" includes records, reports, and orders of governmental agencies).) Evidence Code section 452(h) allows a court to take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate determination by resort to sources of reasonably indisputable accuracy.

Evidence Code section 453 requires a court to take judicial notice of any matter specified in Evidence Code section 452 if a party requests it, and if it gives the adverse party sufficient notice of the request and furnishes the court with sufficient information to enable it to take judicial notice of the matter. Accordingly, Ontario respectfully requests that this Court take judicial notice of the documents listed below, pursuant to Evidence Code section 452(h) as follows:

Exhibit A. Letter Agreement re Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology, dated 2/5/2019.

Exhibit B. Opinion, Case No. E080457, dated April 18, 2025.

Exhibit C. Peace Agreement Chino Basin, dated June 29, 2000.

Exhibit D. City of Ontario's Combined Reply to the Oppositions of Watermaster, Fontana Water Company and Cucamonga Valley Water District, filed May 27, 2022.

Exhibit E. Fontana Water Company's and Cucamonga Valley Water District's Opposition to City of Ontario's Application For an Order to Extend Time Under Judgement, Paragraph 31(c) to Challenge Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment Package, filed March 25, 2022.

Exhibit F. Declaration of Courtney Jones in Support of City of Ontario's Combined Reply to Oppositions, filed May 27, 2022.

Exhibit G. Declaration of Elizabeth Hurst in Support of Inland Empire Utilities Agency's Opposition to City of Ontario's Application to Extend Time to Challenge Watermaster Assessment Package, filed March 24, 2022.

Exhibit H. Declaration of Scott Burton in Support of City of Ontario's Combined Reply to Oppositions, filed May 27, 2022.

Exhibit I. Restated Judgment, entered January 27, 1978.

Exhibit J. Declaration of Courtney Jones in Support of City of Ontario's Motion Challenging Watermaster's November 7, 2022 Actions/Decision to Approve the FY 2022/2023 Assessment Package, filed February 14, 2023.

Exhibit K. Order Concerning Groundwater Storage Program Funding Agreement – Agreement No. 49960, entered June 5, 2003.

Exhibit L. Order Approving Storage and Recovery Program Storage Agreement re Implementation of Dry Year Yield Storage Project, entered June 24, 2004.

Exhibit M. Rotation Schedule for Representatives to the Watermaster, approved November 17, 2015.

Exhibit N. Peace II Agreement: Party Support For Watermaster's OBMP Implementation Plan – Settlement and Release of Claims Regarding Future Desalters, dated October 25, 2007.

Exhibit O. Declaration of Christopher Quach, filed February 17, 2022.

For the reasons stated above, Ontario respectfully requests the Court take judicial notice of **Exhibits A to O**, as described above.

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Dated: July 29, 2025

STOEL RIVES LLP

By: _____
ELIZABETH P. EWENS
MICHAEL B. BROWN
Attorneys for
City of Ontario

EXHIBIT A

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

March 20, 2019

Mr. Kirby Brill
Interim General Manager
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

Mr. Matthew Litchfield
General Manager
Three Valleys Municipal Water District
1021 E. Miramar Avenue
Claremont, CA 91711

Mr. Peter Kavounas
General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Dear Messrs. Brill, Litchfield, and Kavounas:

Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology

Enclosed for your files are copies of the fully executed letter agreement "Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology."

If you have any questions, please contact me at (213) 217-6756, or via email at mhacker@mwdh2o.com.

Sincerely,

Matthew Hacker
Senior Resource Specialist

MH:rh

Enclosure

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

February 5, 2019

Mr. Kirby Brill
Interim General Manager
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

Mr. Matthew Litchfield
General Manager
Three Valleys Municipal Water District
1021 E. Miramar Avenue
Claremont, CA 91711

Mr. Peter Kavounas
General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Dear Messrs. Brill, Litchfield, and Kavounas:

Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology

This letter documents agreement among Metropolitan, Inland Empire Utilities Agency (IEUA), Three Valleys Municipal Water District (Three Valleys), and the Chino Basin Watermaster (Watermaster) for storage of water above the initial 25,000 acre-feet cap in the Chino Basin Conjunctive Use Program (CUP). Normally, CUP water is stored in advance by Metropolitan for use during dry years and emergencies to reduce deliveries at the service connection. By letter dated June 23, 2017, Metropolitan called for up to 25,000 acre-feet to be stored in its CUP account through June 30, 2018. The parties stored about 39,000 acre-ft. Metropolitan appreciates the effort that the parties have shown to maximize storage during this period. This letter documents adjustments to the method of determining extraction from the account, in recognition of these efforts to store additional water.

By agreement of the parties, any water stored after June 1, 2017, would be purchased from the account by IEUA and Three Valleys when the parties pump over the groundwater baseline as defined in Exhibit G. A copy of Exhibit G is enclosed in this letter. This pumping could be the result of a response to a call for pumping made by Metropolitan or it could be through normal operational decisions made by the individual parties in a given year. Except during a call, the increase in pumping would be voluntary and performance would be measured by the parties that elect to increase their pumping. Call provisions would remain unchanged. The parties will receive O&M, power, and treatment credits and be billed for the water when the parties pump over the groundwater baseline as defined in Exhibit G. Voluntary purchases will be accomplished as follows:

- IEUA and Three Valleys will submit certifications for CUP storage as normal. These certified amounts will be added to the storage account.
- Credits will be applied if a Party chooses voluntarily to purchase stored water by increasing groundwater pumping. The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.E of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account.

If you concur with these provisions, please execute this letter signifying your concurrence and return to Metropolitan.

Sincerely,

Deven Upadhyay
Assistant General Manager/COO

MH:vh

Enclosure

CONCUR:

Kirby Brill
Interim General Manager

2/26/19
Date

Matthew Litchfield
General Manager

Date

Peter Kavounas
General Manager

Date

CONCUR:

_____ _____

Kirby Brill
Interim General Manager

Date

_____ 2/25/19

Matthew Litchfield
General Manager

Date

_____ _____

Peter Kavounas
General Manager

Date

CONCUR:

_____ _____

Kirby Brill
Interim General Manager

Date

_____ _____

Matthew Litchfield
General Manager

Date

P. Kavounas 2/19/19

Peter Kavounas
General Manager

Date

EXHIBIT B

Court of Appeal, Fourth Appellate District, Division Two
Brandon L. Henson, Clerk/Executive Officer
Electronically FILED on 4/18/2025 by D. Bailon, Deputy Clerk

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff and Respondent,

v.

CITY OF ONTARIO,

Defendant and Appellant;

CUCAMONGA VALLEY WATER DISTRICT, et al.,

Defendants and Respondents.

E080457, E082127

(Super.Ct.No. RCVRS51010)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gilbert G. Ochoa, Judge. Reversed and remanded with directions.

Stoel Rives LLP, Elizabeth P. Ewens, Michael B. Brown and Whitney Brown, for Defendant and Appellant, City of Ontario.

Brownstein Hyatt Farber Schreck, LLP, Scott S. Slater, Bradley J Herrema and Laura K. Yraceburu, for Plaintiff and Respondent, Chino Basin Watermaster.

Lagerlof, LLP and Thomas S. Bunn III, for Defendants and Respondents, Fontana Water Company and Cucamonga Valley Water District.

JC Law Firm, Jean Cihigoyenetche and J. Martin Cihigoyenetche, for Defendant and Respondent Inland Empire Utilities Agency.

A 1978 stipulated judgment (Judgment) governs the water rights in the Chino Groundwater Basin (Basin) by establishing the Basin's governance structure, providing judicial oversight via continuing jurisdiction provisions, and creating the Chino Basin Watermaster (Watermaster). To achieve full utilization of the Basin's resources, Watermaster adopted, and the superior court approved, a long-term management program, one element of which instituted an objective and strategy to develop storage and recovery programs for the broad regional benefit of the parties to the Judgment. One such program—Dry Year Yield Program (DYY Program)—stores extra groundwater during wet years and then recovers the water during dry years. To finance its actions, Watermaster establishes an annual budget and assesses parties to the Judgment based on their groundwater production.

In this consolidated appeal, one party to the Judgment, the City of Ontario (Ontario), challenges Watermaster's fiscal year (FY) 2021/2022 and 2022/2023 assessments on the grounds Watermaster failed to levy assessments on the groundwater voluntarily produced as part of the DYY Program based upon its erroneous interpretation and application of the 2019 Letter Agreement that amended the agreement that governs the DYY Program. The superior court, inter alia, found Ontario's challenge to be an untimely and improper objection to the 2019 Letter Agreement—entered into between

Three Valleys Municipal Water District (TVMWD),[1] Watermaster, Metropolitan Water District of Southern California (Metropolitan), and Inland Empire Utilities Agency (IEUA)—and further held that stored and supplemental water (from the DYY Program or other storage programs) are exempt from Watermaster assessment.

On appeal, Ontario requests reversal of the superior court's orders and remand with instructions to (1) direct Watermaster to implement the DYY Program in a manner consistent with the Judgment and prior court orders, (2) correct and amend the FY 2021/2022 and 2022/2023 Assessment Packages to assess water produced from the DYY Program, and (3) invalidate the 2019 Letter Agreement and direct Watermaster to comply with the process provided for in the Judgment and subsequent court orders when approving material changes to the DYY Program.

We conclude the superior court erred in finding Ontario's challenges to be untimely and in affirming Watermaster's interpretation of the 2019 Letter Agreement. We therefore reverse.

I. PROCEDURAL BACKGROUND AND FACTS

A. The Judgment, Pools, and Watermaster.

In 1975, Chino Basin Municipal Water District (later known as IEUA) initiated this action against several parties to adjudicate their rights and obligations with respect to groundwater in the Basin, one of the largest groundwater basins in Southern California, providing water to millions of residents in San Bernardino, Riverside, and Los Angeles

[1] Referred to in the Judgment as Pomona Valley Municipal Water District.

Counties. Three years later, the parties stipulated to the Judgment, which created a water management plan for the Basin—the Optimum Basin Management Program—by, among other things, setting a safe yield (maximum extraction amount) for the Basin; establishing three stakeholder groups or "pools"—the Overlying Agricultural Pool (Ag Pool), Overlying Non-Agricultural Pool (Non-Ag Pool), and Appropriative Pool (Ap Pool)—each with its own safe yield, rights, and restrictions; and allowing the superior court to retain and exercise jurisdiction via the appointment of Watermaster, an arm of the court. (*Dow v. Honey Lake Valley Resource Conservation Dist.* (2021) 63 Cal.App.5th 901, 911 [observing that Watermaster is "'considered an arm of the Court'"].) As an arm of the court, Watermaster administers and enforces the Judgment and any subsequent instructions or orders of the superior court.

The Pools are responsible for costs of replenishment water and other aspects of the physical solution. Each Pool has a committee that administers its internal affairs, employs its own separate counsel, may seek judicial review of any Watermaster action or failure to act, and—along with an Advisory Committee—provides advice and assistance to Watermaster on the administration of the Judgment. Ontario is a member of the Ap Pool. Watermaster, a nine-member board, is comprised of representatives of parties to the Judgment, including representatives from each Pool. It "administer[s] and enforce[s] the provisions of this Judgment and any subsequent instructions or orders of the [c]ourt," keeps records of water use and ownership, oversees and approves water transfers, monitors groundwater levels, determines the operating safe yield for each year,

and assesses the Pools for its expenses. However, the court retains "[f]ull jurisdiction, power and authority . . . as to all matters contained" in the Judgment.

B. The Basin's Safe Yield

The Judgment identifies the Basin's safe yield, namely, the amount of water that can be withdrawn annually without harming or depleting the Basin.[2] The safe yield defines the parties' various rights to Basin groundwater. Parties are prohibited from producing groundwater except as provided in the Judgment, specifically "pursuant to the provisions of the Physical Solution or a storage water agreement." Also, a party's individual groundwater production establishes the party's portion/assessment of Basin costs. The Judgment set the initial safe yield at 140,000 acre-feet (AF) per year; however, in 2017, the superior court reset it to 135,000 AF per year.

C. The Basin's Groundwater Storage.

The Judgment acknowledges the Basin's "substantial amount of available groundwater storage capacity" for "storage and conjunctive use of supplemental water

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[2] "'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 [(pumped or extracted groundwater)] from the Basin under cultural conditions of a particular year without causing an undesirable result." "The phrase 'undesirable result' is understood to refer to a gradual lowering of the groundwater levels resulting eventually in depletion of the supply." (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278 [safe yield is "'the maximum quantity of water which can be withdrawn annually from a groundwater supply under a given set of conditions without causing an undesirable result'"], disapproved on other grounds in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1247-1248.)

with Basin Waters."[3] Conjunctive use is the planned use of surface water and groundwater resources (either immediately using or storing) to provide a buffer against drought. Stored water is defined as "supplemental water held in storage, as a result of direct spreading, in lieu delivery, or otherwise, for subsequent withdrawal" and is not included in the Basin's safe yield. Supplemental water includes "both water imported to Chino Basin from outside Chino Basin Watershed, and reclaimed water," which in turn is defined as water "which, as a result of processing of waste water, is suitable for a controlled use." The Judgment expressly enjoins the unauthorized storage and withdrawal of supplemental water other than pursuant to an agreement with Watermaster; it compels the adoption of uniformly applicable rules and a standard form of agreement for storage of supplemental water; however, storage agreements "shall by their terms preclude operations which will have a substantial adverse impact on other producers."

D. The Optimum Basin Management Program.

At the superior court's direction, Watermaster prepared the Basin's management program—the Optimum Basin Management Program (OBMP)—to address groundwater quantity and quality issues and regulate withdrawals. The OBMP was divided into two phases: Phase I (the report) was adopted in 1999, and Phase II (implementation plan) was approved by the court in 2000. The OBMP was subject to intensive settlement negotiations that led to various parties to the Judgment executing the Peace Agreement in June 2000 to resolve their disputes regarding "a number of matters pertaining to the

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[3] It is estimated that the Basin has an unused storage capacity of about one million AF.

power and authority of the Court and Watermaster under the Judgment, . . ." It addresses implementation of the OBMP and allows Watermaster to administer transfers, recharge, and storage/recovery of water. The Peace Agreement, amended in 2004 and 2007, prohibits the approval of a water storage and recovery project "if it . . . will cause any Material Physical Injury to any party to the Judgment or the Basin."

The OBMP's implementation plan defines the Operational Storage Capacity of the Basin at approximately 5,300,000 AF of water and introduces the concept of Safe Storage ("'an estimate of the maximum storage in the Basin that will *not* cause significant water quality and high groundwater related problems'") and Safe Storage Capacity (quantified at about 500,000 AF). Subsurface storage space in a groundwater basin is a public resource, which must be put to beneficial use under Article X, section 2 of the California Constitution. (*Central and West Basin Water Replenishment Dist. v. Southern Cal. Water Co.* (2003) 109 Cal.App.4th 891, 905.)

E. Annual Assessments.

Watermaster levies and collects assessments based on each party's water production during the prior year, namely the annual quantity of groundwater[4] pumped or extracted from the Basin. Thus, each year Watermaster staff prepare an assessment

[4] The Judgment's definition of groundwater does not distinguish between the "type" of groundwater or how that water made its way into the Basin. Groundwater is defined as water "beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table."

package detailing the accounting of each party's production and use of Basin water.[5] Each party's assessment is determined by dividing the total of the fixed costs of operating the Basin by the total annual production of all parties; this calculation yields a dollar amount per acre feet of water. Under the Watermaster Rules and Regulations, uniform assessment of production is mandatory. Given fixed costs, a decrease in the total annual production results in an increase in the unit cost.

F. Groundwater Storage Program Funding Agreement and Dry Year Yield Program.

In 2000, Metropolitan received $45 million in general obligation bonds for groundwater storage projects within its service area. IEUA and TVMWD are member agencies of Metropolitan. Metropolitan has had storage agreements with IEUA and Watermaster since 1979. In 2003, Metropolitan, IEUA, TVMWD, and Watermaster entered into a Groundwater Storage Program Funding Agreement (Funding Agreement), which was approved by the superior court. The Funding Agreement was subsequently amended to make adjustments to improve and clarify measurement of storage and extraction, to clarify how performance of calls will be evaluated, and to revise administrative milestones and make miscellaneous updates.

In 2004, Watermaster, IEUA, and TVMWD entered into the Storage and Recovery Program Storage Agreement (Storage and Recovery Agreement), which specified the

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[5] The term Basin water is defined as groundwater within the Basin that 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. The "term does not include Stored Water."

permissible quantity of water that could be stored under the DYY Program.[6] The 2004 court order approving this agreement emphasized that the DYY Program will "provide[] broad mutual benefits to the parties to the Judgment" but prohibited Watermaster from approving any annual operating plan that "will have a substantial adverse impact on other producers." The order acknowledged the Judgment's provision that "no use shall be made of the storage capacity of Chino Basin except pursuant to written agreement with Watermaster," approved by "'written order of the Court,'" and found the Storage and Recovery Agreement was "unlikely to have any adverse impacts on a party to the Judgment."

The DYY Program authorized Metropolitan (1) to store up to 100,000 AF of imported water in the Basin,[7] subject to higher amounts if approved in advance by Watermaster, and (2) to require (or "call") participating agencies (including IEUA and TVMWD) to produce (pump) 33,000 AF of stored water rather than using the same amount of surface water. The details of how participating agencies would pump stored

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[6] The DYY Program "allows participating members ('Operating Agencies') of two wholesale agencies [IEUA] and [TVMWD] to withdraw [the] water" stored by Metropolitan. The Operating Agencies include Chino, Chino Hills, Ontario, Pomona, Upland, Cucamonga Valley Water District (CVWD), Jurupa Community Services District, and Monte Vista Water District, all of which are parties to the Judgment and retail water purveyors within the IEUA and the TVMWD service areas. These agencies, including IEUA and TVMWD, executed local agency agreements whereby they would use facilities owned or controlled by them to implement the DYY Program. The Fontana Water Company (FWC) negotiated with IEUA but did not opt-in as a participating agency.

[7] This amount is within the presumptive safe harbor of the Safe Storage Capacity given the fact that Watermaster held approximately 226,797 of the 500,000 AF maximum.

water, including specific performance criteria regarding reductions in imported water deliveries, were provided for in Exhibit G attached to the Funding Agreement. Exhibit G was initially entitled "Chino Basin Conjunctive Use 'Dry Year' Storage Project Performance Criteria." Because IEUA and TVMWD are not local water producers, Exhibit G's performance criteria, which include both groundwater and imported water criteria, are placed on their member agencies to perform. The imported water criteria require a roll-off from imported water supplies and onto groundwater production from the DYY Program. Thus, a program agency claims DYY credit that is equal to its shift off of imported water and onto DYY Program groundwater.

The DYY Program is administered by a five-member Operating Committee, comprised of two representatives from Metropolitan and three representatives chosen by IEUA, TVMWD, and Watermaster. The Operating Committee is delegated with the authority to prepare the Annual Operating Plan which provides an estimated schedule and location for all storage and extraction under the DYY Program and in conformance with Exhibit G on a monthly basis for the upcoming fiscal year. According to the Storage and Recovery Agreement, the Annual Operating Plan must "provide sufficient information to allow the Operating Committee and Watermaster to assess [the program's] potential impacts."

The DYY Program "allow[s] for rational regional water supply planning by allowing for increased imports to the Chino Basin during wet years, and reduced imports during dry years." In exchange for the right to store up to 25,000 AF per year in the Basin (provided the total amount does not exceed 100,000 AF maximum unless approved

by Watermaster), Metropolitan invested $27.5 million in local infrastructure and makes annual payments ($177,430 for FY 2021/22) to Watermaster for administration of the DYY Program. Otherwise, the costs associated with the DYY Program, including financing the maintenance and operation of its facilities and Watermaster staff administration time, are passed on to the participating entities. DYY Program costs are distinct from assessment fees charged for production of groundwater from the Basin.

The Funding Agreement and the Storage and Recovery Agreement were adopted through the required process as defined in the Judgment/Peace Agreement, after notice and consideration by the pool committees, the advisory committee, and Watermaster, and approval by superior court order. By its order, the court recognized that any local agency agreements necessary for the DYY Program must be implemented by Watermaster and approved by the court. Thus, IEUA, TVMWD, and their member agencies executed written local agency agreements (Local Agency Agreement) to govern performance obligations under the DYY Program. (See fn. 6.)

Subsequently, the Funding Agreement was amended several times to address administerial issues, such as completion timing of facilities and changes in sources of funds. The eighth amendment, dated January 28, 2015, materially changed the DYY Program by altering the participating entities' performance criteria via the adoption of a revised Exhibit G, now named "Chino Basin Conjunctive Use Program (CUP) 'Dry Year' Storage Project Performance Criteria," and increasing the baseline purchase from Metropolitan to the region to 40,000 AF of water. According to Exhibit G, performance is determined by using an operating party's groundwater baseline. The eighth

amendment was adopted after formal notice was provided, the proposal was vetted and approved by the pool committees, the advisory committee, and Watermaster, and a technical analysis confirmed the amendment would not cause material physical injury to the Basin.

G. 2019 Letter Agreement.

In 2017, Metropolitan had excess water from the State Water Project that it needed to store. After obtaining authorization, Metropolitan recharged around 41,380 AF of water into the DYY Program storage account from June 2017 to June 2018. This increase in stored water prompted the Operating Committee to explore the potential of allowing voluntary withdrawal of water, as opposed to mandatory withdrawal via a Metropolitan call. The proposed system of voluntary withdrawals "was deemed not to materially affect the rights of the [DYY Program] parties and local agencies." Thus, in 2018, IEUA proposed revising the DYY Program, "to increase flexibility for the parties in the Chino Basin by allowing the region to choose when to buy-out the DYY account [(voluntary take)] without waiting for [a Metropolitan] 'call year' [(mandatory take)]."

Ontario raised questions regarding whether these voluntary withdrawals from the DYY Program storage account under the proposed system would be subject to Watermaster assessments as typical production from the Basin, or whether the proposed voluntary withdrawals would be exempt from Watermaster assessment as part of the storage and recovery program. Ontario opined that if the voluntary withdrawal system would materially affect the DYY Program, the proper implementation mechanism would be a formal amendment to the program documents. IEUA replied, "Based on

conversations with [Watermaster], the DYY water is a storage and recovery program, and is not subject to assessments." Following subsequent discussions, Ontario stated, "Based on the information provided by IEUA, [Ontario is] currently neutral regarding the proposed letter agreement between IEUA and [Metropolitan]. As long as there are parameters that are undecided or unclear, Ontario cannot take a position of support because we cannot know the full effects of the proposed changes. Without these details, which would best be explained and memorialized in an amendment, we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise."

At the Ap Pool's meeting on September 13, 2018, Watermaster's General Manager (Peter Kavounas) noted that "some proposed changes" to the DYY Program had been circulated, and he planned to sign it "on behalf of Watermaster" but "the changes don't commit Watermaster to - - to anything. We actually don't think a letter is even required. It's just [Metropolitan] offering its water at better terms to the parties, which they're entitled to do. So if there is a letter, we do plan to sign it." He added, "It's a good thing. Again, it doesn't affect Watermaster, but we are signatories to the original DYY. So if they want us to sign a letter of acknowledgement, I will go ahead and do that." At the Watermaster Board meeting on September 27, 2018, Mr. Kavounas informed the Board about Metropolitan's proposed changes to the DYY Program, and he characterized them as "favorable to the parties." He added, "We don't believe they constitute a change to the agreement, so we don't intend to bring an agreement

amendment to the board. There may be an acknowledgement letter. If there is, I wanted to let you know that I would be signing that acknowledgement letter."

In February 2019, Mr. Kavounas executed the 2019 Letter Agreement between Watermaster, Metropolitan, IEUA, and TVMWD. According to this agreement, any water stored after June 1, 2017 "would be purchased from the account by IEUA and [TVMWD] when the parties pump over the groundwater baseline as defined in Exhibit G. . . . This pumping could be the result of a response to a call for pumping made by Metropolitan or it could be through normal operational decisions made by the individual parties in a given year. Except during a call, the increase in pumping would be voluntary and performance would be measured by the parties that elect to increase their pumping. Call provisions would remain unchanged. The parties will receive O&M, power and treatment credits and be billed for the water when the parties pump over the groundwater baseline as defined in Exhibit G."

Initially, the DYY Program allowed Metropolitan to "call on Parties to take stored water in lieu of [Metropolitan] deliveries and receive an operational credit, or the Parties may do so voluntarily without receiving the operational credit." Either way, the parties "pay [Metropolitan] for the water as if they were receiving ordinary [Metropolitan] deliveries." However, the 2019 Letter Agreement allowed the parties "to voluntarily take water and receive an operational credit without a [Metropolitan] call" when they "pump over the groundwater baseline as defined in Exhibit G."

H. Impacts of the 2019 Letter Agreement.

As previously noted, all water produced in the Basin was assessed consistent with the terms of the Judgement and Watermaster Rules and Regulations; each party's assessment was based on the amount of its individual production.[8] However, following the 2019 Letter Agreement, Watermaster interpreted it to allow parties to produce (take) extra stored groundwater from the DYY Program storage account without realizing a corresponding change or reduction in the production of imported surface water. Thus, in calculating the FY 2021/22 assessment package, Watermaster exempted CVWD's voluntary production of 20,500 AF of water from the DYY account even though the agreed-to performance criteria authorized it to produce only 11,353 AF in any given year. Also, for the first time, FWC—a member of the Ap Pool, a customer of IEUA, and an

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[8] Watermaster filed a request for judicial notice with its respondent's brief. We reserved ruling for consideration with the merits of the appeal, Having now considered the request, we deny it. The request seeks judicial notice of Metropolitan Resolution 9265—which adopted updates to Metropolitan's wholesale water rates and charges, including its full service volumetric rates—on the grounds the Metropolitan's wholesale water rates relate to the cost of water voluntarily withdrawn from the DYY Program storage account. In response, Ontario contends the request should be denied because Watermaster never presented this document to the superior court, and it is irrelevant to the issues currently before this court. We agree with Ontario and deny the request for judicial notice. "Reviewing courts generally do not take judicial notice of evidence not presented to the trial court." (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) In exceptional circumstances, we may, but are not required to, take judicial notice of material that was not presented to the lower court in the first instance. (*Ibid.*; see *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325.) Watermaster has not presented any exceptional circumstances. We therefore follow the general rule and decline to exercise our discretion to take judicial notice of this evidence. Also, the evidence is unnecessary to our resolution of this appeal. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 613, fn. 29 ["materials in question are unnecessary to resolution of the appeal"].)

entity not governed by a Local Agency Agreement—voluntarily produced and claimed 2,500 AF of stored groundwater from the DYY account. Watermaster exempted this voluntary production from FWC's FY 2021/22 assessment.

Similarly, Watermaster's interpretation of the 2019 Letter Agreement affected calculation of the FY 2022/23 assessment package. For example, CVWD shifted off of imported water by 13,915 AF but claimed DYY production of 17,912 AF (4,000 AF more). FWC shifted off of imported water by 1,718 AF but claimed DYY production of 5,000 AF (3,282 AF more). The shift off of imported water is fundamental to the DYY conjunctive use program, and it is mandatory under the terms of the court orders approving the DYY Program, which adopt Exhibit G performance criteria.

I. Ontario's Challenge.

In response to Watermaster's proposed FY 2021/2022 Assessment Package, on November 1, 2021, Ontario requested an explanation for the exemption of 23,000 AF of groundwater produced from the DYY Program. Ontario claimed such exemption was inconsistent with the Judgment which required its assessment. On November 18, 2021, Watermaster Board directed its staff and legal counsel to evaluate Ontario's concerns. Nonetheless, that same day, Watermaster Board approved the FY 2021/2022 Assessment Package; its staff noted that, if warranted, the assessment package could always be changed retroactively. Subsequently, discussions continued regarding Ontario's concerns. Monte Vista Water District also expressed its concerns related to unrestricted voluntary takes and their impacts on assessments to Watermaster. Watermaster Board

directed staff to consult with the parties, prepare a summary of the issue, and make any pertinent recommendations.

In preparing its January 27, 2022, report, Watermaster staff noted Ontario asked that Watermaster cease any further implementation of the 2019 Letter Agreement and amend the assessment packages as applicable, and Monte Vista Water District recommended the provisions of the 2019 Letter Agreement be set aside and "clear and consistent criteria [be established] for how DYY [Program] production should be assessed by Watermaster." The staff opined that Ontario's concerns "appear to be predominantly: (i) the precedent of how aspects of the [DYY] Program's administration are adjusted and (ii) the specific financial consequences resulting from [Metropolitan's], IEUA's, TVMWD's and Watermaster's willingness to extend the recovery of imported water stored in the Basin from dry years to all years for the remainder of the Program."

When the Watermaster Board discussed Ontario's concerns on January 27, 2022, it concluded the following: (1) Watermaster cannot set aside the 2019 Letter Agreement because the Operating Committee implements operation of the DYY Program according to the contract provisions, including the 2019 Letter Agreement; (2) Ontario's complaint concerns the effects of the 2019 Letter Agreement; (3) Monte Vista Water District now concludes the 2019 Letter Agreement was not the appropriate vehicle even though Monte Vista Water District was an integral part in its development; (4) the parties may agree to a different forward implementation of the DYY Program under existing terms and conditions including the 2019 Letter Agreement, and instruct Watermaster accordingly; and (5) the four signatories to the DYY Program (Metropolitan, IEUA, TVMWD, and

Watermaster) may formally modify it, and Watermaster may propose such modification to the Operating Committee. Watermaster staff recommended the parties "could reach agreement on forward implementation of the DYY Program under existing terms and conditions; or, [¶] [they] could recommend, upon reaching consensus, one or more DYY modifications to IEUA, its Member Agencies, and Watermaster to consider and propose to the Operating Committee, leading to a DYY contract modification."

When no resolution was reached by February 17, 2022, Ontario filed an application in the superior court for an order to extend the time under paragraph 31(c) of the Judgment, from 90 days to 180 days, to challenge Watermaster's November 18, 2021, decision approving the FY 2021/2022 Assessment Package, or if such request is denied, to consider this application to be the challenge. Watermaster, IEUA, FWC, and CVWD opposed Ontario's application. On November 3, 2022, the court concluded Ontario's challenge to the FY 2021/2022 Assessment Package was really a challenge to the validity of the 2019 Letter Agreement and denied it as untimely. Ontario appealed.

When Watermaster approved the FY 2022/2023 Assessment Package on November 17, 2022, Ontario again filed a motion in the superior court challenging the failure to levy assessments on water voluntarily produced from the DYY Program. Watermaster, IEUA, FWC and CVWD opposed the motion. On August 21, 2023, the court denied the motion on the grounds Ontario's position regarding the validity of the 2019 Letter Agreement was previously rejected, the Judgment does not require assessment of stored or supplemental water, and Ontario misconstrues the language in the 2019 Letter Agreement because Exhibit G's performance criteria do not apply to

voluntary withdrawals. Ontario appealed. We consolidated the two appeals for purposes of briefing, oral argument, and decision.

II. DISCUSSION

Ontario challenges the superior court's rulings that Watermaster was not required to levy assessments on groundwater produced as part of the DYY Program. It contends (1) Watermaster's failure to assess water produced from the DYY Program storage account is inconsistent with the Judgment and subsequent court orders; (2) Watermaster violated the Judgment by allowing a nonparty (FWC), without a written storage agreement, to withdraw stored groundwater through the DYY Program; (3) the 2019 Letter Agreement made unauthorized changes to the DYY Program without providing notice or following the required approval process; (4) Ontario's challenge is timely; (5) the superior court erred in holding that all stored and supplemental water in the Basin is categorically exempt from assessment; and (6) Watermaster erred in failing to apply the Exhibit G performance criteria when interpreting the 2019 Letter Agreement.

As we explain, we conclude Ontario's challenge is timely and the 2019 Letter Agreement was incorrectly interpreted at best, or imprudently executed at worst.

A. Timeliness of Ontario's Challenge.

We begin by considering the issue of timeliness. According to the superior court's ruling, Ontario's challenge to Watermaster's approval of the FY 2021/2022 and 2022/2023 Assessment Packages are thinly veiled challenges to Watermaster's execution of the 2019 Letter Agreement and, as such, they are untimely because the 2019 Letter Agreement was provided to all parties on or around March 20, 2019. The court explained

that "under Paragraph 31(c) of the Judgment, *Ontario had 90 days to serve and file notice of any motion or application seeking review of Watermaster's action in executing the 2019 Letter Agreement*." Thus, according to the court, Ontario had until June 18, 2019, to challenge Watermaster's execution of the 2019 Letter Agreement.

On appeal, Ontario contends it is not challenging the 2019 Letter Agreement. Rather, it is challenging Watermaster's interpretation of the letter which (1) "made fundamental changes to the DYY Program, including by allowing parties to flout the DYY Storage Agreement by 'voluntarily' producing far more stored groundwater from the DYY account than the Exhibit G performance criteria allowed," and by exempting such production from assessment; and (2) harmed Ontario when applied to both the FY 2021/2022 and 2022/2023 Assessment Packages. Thus, Ontario argues that its challenges are timely. (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 769 (*Travis*).) Moreover, Ontario asserts the 90-day period in which a party must file a notice or application seeking review of an action like the 2019 Letter Agreement never accrued because Watermaster failed to provide formal notice of its approval of the letter pursuant to paragraph 31 of the Judgment. Alternatively, Ontario argues that its challenges are "akin to a challenge to an unlawful tax" because the 2019 Letter Agreement imposes a continuing or recurring obligation. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 812.) Respondents Watermaster, IEUA, and CVWD refute each of these contentions and argue the challenges are barred by laches. We conclude Ontario's challenges to both FY 2021/2022 and 2022/2023 Assessment Packages, filed within 90 days of Watermaster's action approving them, are timely.

Citing *Travis*, Ontario argues it was Watermaster's application of the 2019 Letter Agreement in the FY 2021/2022 and 2022/2023 Assessment Packages, including the new benefit given to FWC, that harmed Ontario and is the basis for its challenge. We agree. At issue in *Travis* was a statute whose 90-day limitations period was triggered differently depending on whether the challenge was to enactment of an ordinance or to imposition of conditions under the ordinance. (*Travis*, *supra*, 33 Cal.4th at p. 768; see *County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, 1324.) *Travis* involved two property owners' challenge to a county ordinance they alleged violated state law, was preempted by state and federal law, and unconstitutionally took their property without compensation by imposing occupancy and rent restrictions as permit conditions. (*Travis*, at pp. 762, 764.) Both the trial and appellate court found plaintiffs' claims were time-barred; however, the California Supreme Court disagreed. (*Id.* at pp. 765-766.) The high court explained that since one of the property owners had complained of injury both from imposition of the permit conditions and the ordinance's enactment, the action was in part timely under Government Code section 65009, subdivision (c)(1)(E), which governs actions to "'determine the . . . validity'" of permit conditions and to "'void, or annul'" those decisions. (*Travis*, at pp. 766-767.) According to the court, "[t]his is not a case in which the plaintiff complains of injury *solely* from a law's enactment. . . . [Rather,] Travis complains of injury arising from, and seeks relief from . . . the County's imposition on his second unit permit of conditions required by the [o]rdinance. Having brought his action in a timely way after application of the [o]rdinance to him, Travis may

raise in that action a facial attack on the [o]rdinance's validity. [Citation.]" (*Id.* at pp. 768-769.)

Here, the 2019 Letter Agreement was approved in 2019; however, its effects were unclear until Watermaster interpreted it as (1) authorizing a credit for voluntary DYY Program water takes (regardless of Exhibit G's performance criteria) in calculating assessments, and (2) allowing nonparties to the Funding Agreement to participate. Following the adoption of the FY 2021/2022 and FY 2022/2023 Assessment Packages, Ontario became aware of how Watermaster would interpret and apply the 2019 Letter Agreement and challenged this interpretation and application via challenging the Assessment Packages. Ontario is not claiming injury solely from the approval of the 2019 Letter Agreement. Rather, it complains of injury arising from, and seeks relief from, Watermaster's exemption of certain groundwater produced from the DYY storage account in administering assessments inconsistent with the governing Judgment, prior agreements, and court orders. The exemption of such production is not based on the Judgment or other agreements governing Basin operations and the DYY Program, but upon Watermaster's interpretation of the 2019 Letter Agreement. Having timely challenged Watermaster's approval of the FY 2021/2022 and 2022/2023 Assessment Packages (which reflect Watermaster's imposition of the 2019 Letter Agreement), Ontario may raise an attack on the 2019 Letter Agreement as interpreted and applied.

Nonetheless, Watermaster faults Ontario for not raising this challenge to the FY 2020/2021 Assessment Package which shows a "purported 'waiver' of assessments for voluntary takes when voluntary takes occurring during production year 2019/2020

were not assessed in the 2020/2021 Assessment Package, approved by the Watermaster Board on November 19, 2020." In response, Ontario asserts that, under *Howard Jarvis Taxpayers Assn. v. City of La Habra*, *supra*, 25 Cal.4th at pages 818-825, "a new limitation period begins anew with each unlawful assessment package collected by Watermaster, as does a challenge to the 2019 Letter Agreement. . . . Thus, Ontario had no need to act sooner and any delay in challenging the 2019 Letter Agreement was not 'unreasonable and inexcus[]able.'" Again, we agree.

"[I]n *Howard Jarvis Taxpayers Assn. v. City of La Habra*, *supra*, 25 Cal.4th 809, the plaintiffs belatedly challenged the validity of a municipal tax. Though the limitations period had run on any direct challenge to the validity of the ordinance imposing the tax, [the California Supreme Court] concluded suit was still permissible because the continuing monthly collection of the tax represented an alleged ongoing breach of state law. [Citations.]" (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1199.) Here, Ontario has raised the issue of whether the continuing exemption of voluntary production of DYY Program water from Watermaster's annual assessment (according to Watermaster's interpretation and application of the 2019 Letter Agreement) represents an ongoing breach of the Judgment and other agreements governing Basin operations. As Ontario observes, whether it "should have known . . . about Watermaster's failure to assess stored water as part of the [FY] 2020/2021 Assessment Package is irrelevant."

B. The Exemption of Voluntary Production of DYY Program Water from Watermaster's Annual Assessment.

According to Ontario, this case boils down to whether Watermaster should be bound by the terms of the Judgment and several court orders or by its staff's unilateral decisions that have million-dollar consequences for certain parties to the Judgment. Ontario argues "Watermaster's decision to exempt from assessment stored groundwater produced from the DYY account cannot be squared with the express language of the Judgment and other agreements governing Basin operations, nor with Watermaster's own practice of assessing all water produced before 2019[because t]he effect of [this] decision has been to allow some players in the Basin—notably CVWD and FWC—to circumvent their financial responsibilities while requiring Ontario and others to make up the difference." Respondents disagree, claiming Ontario incorrectly conflates the production of supplemental water in storage with the production of native groundwater, and DYY Program withdrawals have historically been exempt from assessments. IEUA further asserts that FWC was not obligated to have a local agency agreement to voluntarily take water, and the 2019 Letter Agreement suspended the Exhibit G performance criteria on voluntary withdrawals apart from utilizing the same baseline measure for production.

1. Standard of Review.

Since the primary issue before this court involves the 2019 Letter Agreement, and other agreements governing Basin operations, we exercise our independent judgment and

apply de novo review. (*Dow v. Honey Lake Valley Resource Conservation Dist.* (2021) 63 Cal.App.5th 901, 911.)

2. Analysis.

Although the parties have raised issues regarding (1) whether water from the DYY Program is withdrawn (not produced), (2) whether stored and supplemental water are simply two types of ground water, and (3) whether all stored and supplemental water in the Basin is categorically exempt from assessment, we need not resolve these issues today because we conclude that Watermaster erred in its interpretation and application of the 2019 Letter Agreement. As to the other issues raised, we leave them in the hands of the parties, who are much better suited than the superior and appellate courts to decide. While our reversal of the superior court's orders includes a reversal of the lower court's determination of these issues, we express no opinion on them, preferring to allow the parties to resolve them prior to judicial intervention, as they have done in the past. Thus, our focus is on the interpretation and application of the 2019 Letter Agreement.

As previously noted, the DYY Program is a conjunctive use program specifically designed to maximize the flexibility and reliability of water supplies, including the replacement of imported water with stored groundwater during dry years. The program is governed by three sets of agreements (two of which were approved by the superior court): (1) the Funding Agreement, (2) the Storage and Recovery Agreement, and (3) the Local Agency Agreements. Watermaster oversees the program by virtue of the Storage and Recovery Agreement and its seat on the Operating Committee. As the superior court's 2004 order emphasized, the DYY Program was designed to "provide broad

mutual benefits to the parties to the Judgment," and the Judgement prohibits Watermaster from approving any Annual Operating Plan that "will have a substantial adverse impact on producers."

At its inception, the DYY Program authorized Metropolitan (1) to place up to 25,000 AF of water per year[9] into storage in wet years, and (2) in dry years, to require parties with local agency agreements (Chino, Chino Hills, Ontario, Pomona, Upland, CVWD, Jurupa Community Services District, and Monte Vista Water District) to produce 33,000 AF of groundwater from the storage account (pursuant to Performance Criteria) while simultaneously requiring these parties to forgo using an equivalent amount of imported water. The Performance Criteria (Exhibit G attached to the Funding Agreement and revised in 2015) effectuates the goal of the DYY Program, which is to provide a balance between the reduction of imported surface water deliveries and the corresponding increase in the production of stored groundwater.

Moreover, the foundation of the DYY Program is the Local Agency Agreements which define each agency's facilities and annual recovery capacity, including performance targets (reducing their use of imported water deliveries and extracting an equivalent amount of DYY Program water) "to which that local agency has committed itself in exchange for its share of the benefits available under the [2003] Funding Agreement." As the superior court stated in 2003, "[I]t is clear that until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery

[9] Unless Watermaster approves a greater rate (100,000 AF max).

Application, or some equivalent approval process is completed, the storage and recovery program cannot be undertaken." The court's order approving the Funding Agreement indicates that "the specific location and operation of the facilities necessary to accomplish this commitment must . . . be analyzed by Watermaster," and approval "will take the form of Watermaster approval of the Local Agency Agreements."

For nearly two decades, the DYY Program accomplished its goals without any issues. However, in June 2017, Metropolitan began storing excess water (41,380 AF in one year) in the DYY Program storage account. This excess stored water prompted the Operating Committee (five members consisting of two representatives from Metropolitan and three representatives chosen by IEUA, TVMWD, and Watermaster[10]) to propose voluntary withdrawals, as opposed to Metropolitan calls. This proposed system of voluntary withdrawals "was deemed not to materially affect the rights of the [DYY Program] parties and local agencies." Thus IEUA suggested revising the DYY Program, "to increase flexibility for the parties in the Chino Basin by allowing the region to choose when to buy-out the DYY account [(voluntary take)] without waiting for [a Metropolitan] 'call year' [(mandatory take)]." The revision came in the form of the 2019 Letter Agreement.

Watermaster does not dispute that the 2019 Letter Agreement operationally changed the DYY Program to broaden participation and increase the potential for the

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[10] Metropolitan has two appointees and two of its member agencies on the five-member Operating Committee, giving it considerable influence; yet it is not a party to this litigation.

storage and recovery of imported water. Mr. Kavounas, Watermaster's General Manager, characterized this change as "favorable to the parties," and claimed that it will not "affect Watermaster." However, that was not the case. As a result of the 2019 Letter Agreement, two agencies (CVWD and FWC—a party not subject to the Performance Criteria in Exhibit G) voluntarily withdrew water from the DYY Program storage account during FY 2020/2021 and 2021/2022. Subsequently, when calculating annual assessments, Watermaster ignored the absence of a Local Agency Agreement (FWC) and the performance criteria set forth in Exhibit G (CVWD) and exempted these takes. These exemptions decreased CVWD's and FWC's assessments, while increasing the assessments of other parties, such as Ontario. Nonetheless, Watermaster maintains that this change in the allocation of assessments among the parties is not relevant because it has no effect on the health of the Basin.

In challenging Watermaster's approval of the FY 2021/2022 and 2022/2023 Assessment Packages, Ontario contends Watermaster's interpretation and application of the 2019 Letter Agreement violated the Judgment and the agreements that created the DYY Program. We agree.

It bears repeating that the DYY Program's goal is to provide greater water supply reliability by storing water in advance of dry periods and pumping the stored water in lieu of receiving imported water during droughts. To that end, the program's agreements involved eight entities with water storage facilities: Chino, Chino Hills, Ontario, Pomona, Upland, CVWD, Jurupa Community Services District, and Monte Vista Water

District (collectively referred to as Operating Parties).[11] Specific performance criteria set forth in Exhibit G dictated the amount of water Metropolitan could require these Operating Parties to produce in lieu of imported water. In 2015, an Amendment No. 8 to the Funding Agreement materially changed the program by altering the Operating Parties' performance criteria. This amendment was adopted after formal notice was afforded to the parties, and the proposed change was vetted (via a technical analysis) and approved by the pool committees, the advisory committee, and Watermaster.

When the idea of revising the DYY Program to include voluntary takes was introduced, IEUA initiated discussion with the Operating Parties. Recognizing the proposed change was a material departure from the program's initial goal, Ontario took a neutral position and refused to support the change "[a]s long as there are parameters that are undecided or unclear . . . because we cannot know the full effects of the proposed changes." Recommending the change be "explained and memorialized in an amendment," Ontario reserved "the right to address any harm or detriment that may arise" based on possible "impacts."

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[11] The Funding Agreement states that "[t]he proposed groundwater storage Program consists of the facilities described in Exhibit H (the '**Facilities**'). The agencies within the service areas of IEUA and TVMWD responsible for operating the respective Facilities ('**Operating Parties**') are . . . listed in Exhibit H. IEUA and TVMWD will enter into agreements with **Operating Parties** within their respective service areas that will require such **Operating Parties** to operate and maintain the Facilities." The Operating Parties listed in Exhibit H include Pomona, Monte Vista Water District Chino, Upland, Chino Hills, CVWD, Ontario, FWC, and Jurupa Community Services District; however, FWC never opted in as an Operating Party.

Despite Ontario's concerns and recommendations, Metropolitan prepared the 2019 Letter Agreement wherein it acknowledged the storage of 39,000 AF of water, and expressed appreciation for the "effort that *the parties* have shown to maximize storage during [FY 2017/2018]." According to the letter, "*the parties*" agreed that water stored after June 1, 2017, "would be purchased from the account by IEUA and [TVMWD] *when the parties pump over the groundwater baseline as defined in Exhibit G.*" Exhibit G was included with the letter. Metropolitan further stated that this pumping "could be the result of a response to a call" by Metropolitan or "through normal operational decisions made by the individual *parties* in a given year. Except during a call; the increase in pumping would be voluntary and performance would be measured by the *parties* that elect to increase their pumping. Call provisions would remain unchanged. The *parties* will receive O&M, power, and treatment credits and be billed for the water when the parties pump over the groundwater baseline as defined in Exhibit G."

As Ontario points out, the effect of the 2019 Letter Agreement (as interpreted and applied by Watermaster) was to "defy the rules set forth in the documents that establish and govern the operation of the DYY Program, including the 2003 Funding Agreement, the 2003 court order adopting it, and the DYY Storage Agreement and its associated court order" by allowing FWC (a nonparty) to voluntarily produce water from the program storage account without a Local Agency Agreement, by letting CVWD to voluntarily produce double its allocated shares of stored water regardless of its performance criteria, and by permitting these voluntary extractions without any corresponding reductions in imported water. We agree.

To begin with, in the order approving the Storage and Recovery Agreement for the DYY Program, the superior court recognized that "[t]he Judgment enjoins storage or withdrawal of stored water 'except pursuant to the terms of a written agreement with Watermaster . . . [that] is [in] accordance with Watermaster regulations.' . . . The Court must first approve, by written order, the Watermaster's execution of 'Ground Water Storage Agreements.'" FWC does not have such agreement. Nonetheless, respondents contend that FWC was not obligated to have a Local Agency Agreement for voluntary withdrawal because additional facilities and performance standards were not involved, and there is nothing in the Funding Agreement or Local Agency Agreements that restrict the withdrawal of DYY Program water to parties with Local Agency Agreements. Watermaster further asserts there is no violation of the Judgment because the Storage and Recovery Agreement for the DYY Program satisfies paragraph 28 of the Judgement, and FWC is not the storing party; rather, Metropolitan owns the water in the DYY Program storage account, and IEUA acts as the manager of the account. According to Watermaster, (1) the Local Agency Agreements were required to enforce the "performance targets to which [each Operating Party] has committed itself in exchange for its share of the [capital] benefits available under the [2003] Funding Agreement;" and (2) since FWC received no capital benefits from Metropolitan, it had no performance obligations (as set forth in Exhibit G), and nothing in the DYY Program agreements suggests that a Local Agency Agreement is required for a voluntary withdrawal because the language is limited to Exhibit G's application to Metropolitan calls only. We are not persuaded by respondents' argument.

None of the three sets of DYY Program agreements considered a situation where the Operating Parties, or nonparties to the program, would be allowed to produce water from the program's storage account absent a court-approved written agreement with Watermaster. To hold otherwise ignores the Judgment, the DYY Program agreements, the conduct of all entities involved in the DYY Program, and the superior court's order approving the program. By using the absence of voluntary withdrawal language to justify their position, respondents seek to have their cake and eat it too. This is not permitted. "In the interpretation of contracts, the paramount consideration is the intention of the contracting parties '. . . as it existed at the time of contracting, so far as the same is ascertainable and lawful.' [Citations.] . . . [¶] The words used in a contract must be given their ordinary meaning, unless there is evidence that the parties intended to use them in a unique sense or to give the words some different meaning. [Citations.] If a contract is reasonably susceptible to more than one interpretation or if it contains latent or patent ambiguities, the court may use extrinsic evidence to clarify the uncertainties; extrinsic evidence is relevant and material to prove a meaning to which the language of an instrument is reasonably susceptible. [Citations.] [¶] In construing a contract, it is not a court's prerogative to alter it, to rewrite its clear terms, or to make a new contract for the parties. [Citations.] Courts will not add a term to a contract about which the agreement is silent. [Citations.]" (*Moss Dev. Co. v. Geary* (1974) 41 Cal.App.3d 1, 9.)

As IEUA acknowledges, DYY Program water is stored pursuant to the Storage and Recovery Agreement between Watermaster, IEUA, and TVMWD. Withdrawals are governed by the Funding Agreement, which sets the terms and conditions under which

water can be stored within the Basin and later called for production by Metropolitan. The Funding Agreement identifies the agencies within IEUA's and TVMWD's service areas as Operating Parties, lists the Operating Parties in Exhibit H (Pomona, Monte Vista Water District, Chino, Upland, Chino Hills, CVWD, Ontario, and Jurupa Community Services District[12]), establishes the performance criteria for each Operating Party, and states that IEUA and TVMWD will enter into separate agreements with every one of them. Additionally, the Local Agency Agreements specify the amount of grant funds which would be passed through from IEUA to the Operating Parties for the purpose of constructing infrastructure to produce DYY Program water. If FWC was not obligated to have a Local Agency Agreement because it was not a storing party, i.e., it received no capital benefits from Metropolitan and had no performance obligations (as set forth in Exhibit G), then why does the Funding Agreement reference and identify Operating Parties? Why does the Storage and Recovery Agreement state that "no person shall store water in, and recover water from the Chino Groundwater Basin through the Storage and Recovery Program, without a Storage and Recovery agreement with Watermaster?" Why are the Operating Parties required to enter into Local Agency Agreements? Why does the 2019 Letter Agreement include Metropolitan's appreciation for the "effort that *the parties* have shown to maximize storage during [FY 2017/2018]?" Who are the parties Metropolitan was referring to if not the Operating Parties identified in Exhibit H to the Funding Agreement? Contrary to respondents' claims, the agreements (including the

[12] Again, FWC never opted in as an Operating Party.

2019 Letter Agreement) that govern the DYY Program do not apply to entities that do not have a Local Agency Agreement.

Moreover, as Ontario points out, Local Agency Agreements "are storage *and recovery* agreements that detail the means by which DYY [Program] water is recovered, including the [Operating Party's] specific responsibilities relating to the pumping of stored water." Thus, water can no more be recovered (produced/withdrawn) without a Local Agency Agreement than it can be stored without such agreements. Nor can the Exhibit G performance criteria be suspended (for any production, voluntary or not) without compromising the integrity of the DYY Program. In other words, to allow the voluntary withdrawal of stored water, and in amounts greater than that permitted under the Exhibit G performance criteria, would create an imbalance between the use of imported surface water and stored water which the program had established. Yet, that is what was done by allowing CVWD to voluntarily produce double its allocated shares of stored water regardless of its performance criteria and without a corresponding reduction in imported water.

IEUA dismisses the voluntary productions as merely "operational changes" to the DYY Program, contending the 2019 Letter Agreement was "within the operational flexibility afforded the Operating Committee in the [2003] Funding Agreement to adapt to changed circumstances." Not so. Operational changes are allowed, but only if they do

not materially affect the rights of the DYY Program parties and local agencies.[13] Such was not the case here since an Operating Party (CVWD) has voluntarily produced double its allocated shares of stored water from the DYY Program storage account, a nonparty has voluntarily produced stored water from the DYY Program storage account, Watermaster has exempted these voluntary productions from assessment, and Ontario's rights were materially affected when its assessments for both FY 2021/2022 and 2022/2023 increased due to the exemption of voluntary production of water from the DYY Program storage account. In other words, Ontario suffered a financial injury as a result of the 2019 Letter Agreement.

Watermaster takes issue with our conclusion that Ontario's financial injury constitutes a significant adverse impact. It argues that this term is found in the Judgment only and originated in 1970 with the enactment of the California Environmental Quality Act. Subsequently, during the negotiation of the Peace Agreement, the term material physical injury was added and defined as any "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." It specifically exempted any

[13] Section 5.2(c)(iv)(b) of the Peace Agreement states that Watermaster is to give first priority to storage and recovery programs that provide broad mutual benefits to the parties to the Judgment.

"economic injury." Thus, Watermaster argues Ontario's financial injuries, which are solely economic injuries, are not redressable. We disagree.

Use of the term substantial adverse impact is not limited to the Judgment. It was used in the superior court's 2003 order approving the Funding Agreement, Watermaster's motion for approval of the Storage and Recovery Agreement, the Storage and Recovery Agreement, the 2004 order approving the Storage and Recovery Agreement, and the court's May 12, 2023, tentative ruling. In 2003, when the Funding Agreement was approved, the court acknowledged the Judgment's requirement that "groundwater storage agreements are to contain terms that will preclude operations having a *substantial adverse impact* on other producers."

When Watermaster moved for approval of the Storage and Recovery Agreement, it also acknowledged the Judgment's requirement that "all storage agreements shall by their terms preclude operations which will have a *substantial adverse impact* on other Producers." Watermaster noted that "[t]his requirement is similar to the requirement contained in the Peace Agreement and Watermaster's Rules and Regulations that Watermaster ensure that no Material Physical Injury is caused to any party or the Basin. Thus, through Part III of the Agreement,[14] Watermaster references the broad requirement that the *storage of water under the Agreement must not cause either*

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14 Section III. of the Storage and Recovery Agreement, entitled "No Material Physical Injury" states: "The Storage and Recovery of Supplemental Water stored under this Agreement will not cause *Material Physical Injury* **or** a *substantial adverse impact* to any party to the 1978 Judgment or to the Basin itself."

"Or" is "used as a function word to indicate an alternative." (https://www.merriam-webster.com/dictionary/or, as of April 17, 2025.)

Material Physical Injury or a substantial adverse impact to any party or to the Basin." If substantial adverse impact is similar to material physical injury, then why use both terms? Why was the term material physical injury defined, but substantial adverse impact was not?

The 2004 order approving the Storage and Recovery Agreement acknowledges the Judgment's provision in paragraph 28 that "agreements for storage . . . must include terms that will 'preclude operations which will have a *substantial adverse impact* on other producers.'" It further provides, "The DYY Storage Agreement calls for the development of Annual Operating Plans, which will provide estimated schedules and locations for the delivery of all water into and out of storage, on a monthly basis, for the upcoming fiscal year. The Annual Operating Plan is to be submitted to Watermaster for approval and is to have sufficient detail to allow Watermaster to assess the potential for any adverse impacts on producers. *Pursuant to Judgment paragraph 28, Watermaster may not approve an Annual Operating Plan that will have a substantial adverse impact on producers.*" And the superior court's tentative ruling for May 12, 2023, reiterated its prior orders' (2003 and 2004) acknowledgment that "*groundwater storage agreements are to contain terms that will preclude operations having a substantial adverse impact on other producers.*"

Given the use of the conjunctive "or" when referencing both substantial adverse impact and material physical injury, we conclude the two terms do not share the same meaning.

Also, the "changed circumstance" that necessitated a modification to the DYY Program was Metropolitan's receipt of excess water (above the amount determined to meet the needs of the program) that needed to be stored. To the extent this excess stored water surpassed the limitations initially imposed by the DYY Program agreements, the Operating Committee[15] should have proposed an amendment to the Funding Agreement, similar to Amendment No. 8 in 2015. This is especially true given the Operating Committee's decision to expand the DYY Program beyond its originally intended purpose by allowing voluntary takes never contemplated by the program's initial agreements.

3. Summary.

To summarize, the DYY Program was created to provide a buffer against drought, allowing Metropolitan to offset water it would otherwise import into the Basin with water stored in the DYY Program storage account. However, in 2018, Metropolitan requested, and was allowed, to put excess water into the DYY Program storage account. It then persuaded the Operating Committee (of which it possessed two votes) to propose the 2019 Letter Agreement. This agreement fundamentally changed the recovery aspect of the DYY Program by allowing voluntary production of water from the storage account regardless of party status or performance criteria. The impact of these voluntary takes materially affected the rights of the Operating Parties and other local agencies when

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[15] If not the Operating Committee, then Watermaster should have proposed an amendment. The Storage and Recovery Agreement provides that any storage and recovery of supplemental water "shall occur only under Watermaster's control and regulation *in accordance with the Judgment and the Peace Agreement*."

Watermaster interpreted and applied the 2019 Letter Agreement inconsistently with the original DYY Program agreements, the Judgment, and prior court orders when it calculated/approved the FY 2021/2022 and 2022/2023 Assessment Packages. Accordingly, we reverse the orders of the superior court and direct Watermaster to correct and amend the FY 2021/2022 and 2022/2023 Assessment Packages consistent with the original DYY Program agreements, the Judgment, and prior court orders.

III. DISPOSITION

The November 3, 2022, and August 23, 2023, orders are reversed. The superior court is directed to enter new orders granting Ontario's challenges, and directing Watermaster to correct and amend its FY 2021/2022 and 2022/2023 Assessment Packages. The issues of (1) whether water from the DYY Program is withdrawn (not produced), (2) whether stored and supplemental water are simply two types of ground water, (3) whether all stored and supplemental water in the Basin is categorically exempt from assessment, and (4) the future viability and application of the 2019 Letter Agreement should be resolved by the parties prior to judicial intervention. Ontario shall recover its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.

EXHIBIT C

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 sub-paragraphs 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 n 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 sub-division, 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 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 (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 (½) 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 groundwater 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 Desalinization 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^{th}) 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 is 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/prevailing 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:

7-31-2000

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**

By_____

DATED: 7/24/00 **CITY OF UPLAND**

By Robert R. Nelson

[Signatures continued on following pages]

DATED: 8/1/00

STATE OF CALIFORNIA

By Marilyn H. Levin

DATED:

CITY OF CHINO

By _____

DATED:
07/31/00

CUCAMONGA COUNTY WATER DISTRICT

By Jeanne 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 Edwin M. De Lira

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_____

DATED:

AGRICULTURAL POOL

By_____

DATED:

APPROPRIATIVE POOL

By_____

DATED: 7/27/00

NON-AGRICULTURAL POOL

By_____

[Signatures continued on following pages]

DATED: 7/31/00

CITY OF CHINO HILLS

By _____

DATED:

JURUPA COMMUNITY SERVICES DISTRICT

By _____

DATED:

AGRICULTURAL POOL

By _____

DATED:

APPROPRIATIVE POOL

By _____

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 D

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PURSUANT TO GOV. CODE, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO HONORABLE STANFORD E. REICHERT

CITY OF ONTARIO'S COMBINED REPLY TO THE OPPOSITIONS OF WATERMASTER, FONTANA WATER COMPANY AND CUCAMONGA VALLEY WATER DISTRICT, AND INLAND EMPIRE UTILITIES AGENCY TO APPLICATION FOR AN ORDER TO EXTEND TIME UNDER PARAGRAPH 31(c) OF THE JUDGMENT, TO CHALLENGE WATERMASTER ACTION/DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE OR ALTERNATIVELY, CITY OF ONTARIO'S CHALLENGE

Hearing:
Date: June 17, 2022
Time: 1:30 p.m.
Dept. S35

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I. INTRODUCTION

City of Ontario ("Ontario") files this Combined Reply in Support of its Application for an Order to Extend Time Under Paragraph 31(c) of the Judgment ("Application for Extension" or "Application"), to Challenge Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment Package ("Watermaster Action") or Alternatively, City of Ontario's Challenge. This Reply is addressed jointly to the oppositions filed by Watermaster and interested parties Fontana Water Company ("FWC") and Cucamonga Valley Water District ("CVWD"), and Inland Empire Utilities Agency ("IEUA") (these interested parties[1] are collectively referred to herein as the "Opposing Parties"). In February 2022, Ontario filed its Application for extension of time to bring its challenge so that the Court would have the benefit of full briefing on issues that fundamentally impact ongoing management of the Chino Basin ("Basin"), including the continued enforcement of procedural safeguards embodied in the Chino Basin Judgment and Orders. That Application for Extension remains pending before the Court. Accordingly, this Reply addresses both Ontario's substantive challenge to the Watermaster Action ("Challenge") as well as Ontario's pending Application for Extension.

Ontario's Challenge stems from Watermaster's unauthorized amendment of the DYY Program in 2019 ("2019 Letter Agreement") and related unlawful cost-shifting applied within the 2021/2022 Assessment Package. While Ontario does not object to the DYY Program or to the development of conjunctive use or other projects that provide substantial benefits to the Basin, Ontario does object to Watermaster's modification and administration of such projects in a manner that does not comply with the Judgment and Orders that govern Basin operations. Specifically, what is at issue is Watermaster's failure to administer the DYY Program in a way that is consistent with the storage agreements approved by Watermaster and ordered by the Court, and Watermaster's decision to bypass the formal Watermaster approval process ("Watermaster Approval Process")[2]

[1] FWC and CVWD are interested parties because Watermaster allowed these agencies to draw unassessed water from the Dry Year Yield Program ("DYY Program") in violation of the Judgment and subsequent Court Orders. IEUA is an interested party as an original party to the DYY Program.

[2] The Watermaster Approval Process is discussed at greater length at Section II.B., below.

in adopting material amendments to the operative agreements. Such disregard for the Judgment, Orders, and agreements that govern Basin operations will cause substantial and material injury to Ontario and, if left unchecked, will set a dangerous precedent for ongoing management of the DYY Program, future proposed storage and recovery programs, and the Basin as a whole.

As a neutral arm of the Court, Watermaster's blatant disregard for the Watermaster Approval Process, and the perpetuation of that violation through Watermaster's adoption of the 2021/2022 Assessment Package, is alarming. Not only does Watermaster take a position that is contrary to the Judgment and Orders that Watermaster is charged with enforcing, Watermaster is openly advocating for a position that financially benefits a few parties at the literal expense of others who, like Ontario, will be required to bear the burden and expense of the cost-shifting impacts contained within the 2021/2022 Assessment Package. As detailed further herein, Watermaster's unauthorized approval of the informal letter agreement, and use of that agreement as the basis to shift more than $2.6 million of production costs from one party to another, should not be allowed to stand.

Just as Watermaster failed to give proper notice of the 2019 Letter Agreement, failed to comply the Court-mandated Watermaster Approval Processes, and actively masked the potential impacts of the 2019 Letter Agreement, Watermaster and Opposing Parties similarly seek now to conceal the actions surrounding the development of the 2019 Letter Agreement and 2021/2022 Assessment Package and resulting damages to other parties. In short, Watermaster has opposed all efforts to ensure that this Court is fully briefed on the merits and has steadfastly opposed Ontario's Application for Extension even though the request was necessitated by the fact that Ontario did not have legal representation by water counsel at the time of the filing. Watermaster's continued refusal to agree to a full briefing schedule on the challenged Watermaster Action is especially notable given Watermaster's position as an arm of the Court and reveals the extent of Watermaster's efforts to avoid judicial review and scrutiny of its actions based on a full record.

Watermaster's lack of impartiality in refusing to agree to full briefing or a reasonable extension of time is also contrary to Watermaster's own prior extension requests, which recognize the Court's past accommodation of such requests to further the overarching objective of ensuring

there is adequate time to fully brief issues on the merits. In Watermaster's own words:

> This Court is well aware from its personal experience that the divergent positions of the individual parties before the Court have almost always been accommodated. At times, nuanced arguments are asserted whereby resolutions of questions regarding implementation of the decree lend themselves to broad participation in oral argument by all parties to the Judgment. *Nowhere is this more true than in the case seeking review of a Watermaster action* in which the Eleven Appropriators invoke a procedure binding on Watermaster arising under the Judgment.
>
> *The Opposition points to no prejudice – other than time – as a result of the requested continuance, and when compared with the interests of justice in a complete and accurate record, the continuance should be granted.*

(See Request for Judicial Notice ("RJN"), Ex. 29 at 3:9-18 (emphasis added).) Similar to the above, the only alleged "prejudice" asserted by Watermaster and the Opposing Parties is time, and that prejudice is both speculative and moot given the Court's continuance of the hearing on the Application, which provided the time and opportunity for full briefing on the merits.[3]

While Ontario has fully briefed the issues in this Reply, any objections or allegations of prejudice raised by Watermaster and Opposing Parties regarding a further extension of time, or to the scope of legal arguments raised in this Reply, are of Watermaster's and Opposing Parties' own making and should be disregarded. Similarly, to the extent Watermaster and the Opposing Parties assert that Ontario's arguments and evidence should be in any way limited, then Ontario requests that the Court grant Ontario's Application for Extension and set a full briefing schedule for the Challenge. Good cause exists to grant such request based on: Ontario's good faith and diligent efforts to resolve this dispute through ongoing negotiations with Watermaster and Opposing Parties into February 2022; Ontario's efforts to obtain an extension of time to secure new water law counsel as soon as Ontario learned from Opposing Party FWC that it would not provide a conflict waiver for Ontario's then-water counsel to file a Challenge; and Watermaster's and the Court's recognition

[3] On April 8, 2022, the Court issued a "de facto" extension when it continued the hearing to June 17, 2022. Because the continuance provided the parties time to fully submit briefing on the underlying Challenge, Ontario asked Watermaster and Opposing Parties to stipulate to a briefing schedule so that these important issues could be fully briefed. Watermaster and Opposing Parties inexplicably refused this request. (Declaration of Elizabeth P. Ewens ("Ewens Decl."), ¶¶ 6-7, Ex. 2.)

that extension requests should be accommodated so that issues affecting the Basin can be fully decided on a complete and accurate record.

In sum, Ontario respectfully requests that the Court grant its Challenge, invalidate the 2019 Letter Agreement, and issue an order directing Watermaster to (1) comply with the Watermaster Approval Process Orders with regard to the DYY Program, (2) implement the DYY Program in a manner that is consistent with the Judgment and Court Orders in this adjudicated Basin, and (3) correct and amend the 2021/2022 Assessment Package to assess water produced from the DYY Program. Alternatively, Ontario requests that the Court grant its Application for Extension to ensure that the Court has a complete record to further inform its decision in this case.

II. FACTUAL BACKGROUND REGARDING THE BASIN ADJUDICATION, WATERMASTER APPROVAL PROCESS, AND DYY PROGRAM

A. The Basin Adjudication and the Court's Continuing Jurisdiction

This action originated with a complaint filed in 1975 seeking an adjudication of water rights and the imposition of a physical solution in the Basin and culminated with the entry of the Judgment in 1978 following a stipulation among the majority of parties and trial. (RJN, Ex. 1 at ¶ 1.) In addition to adjudicating rights to groundwater and storage capacity within the Basin, the Judgment also authorized the appointment of Watermaster to "administer and enforce the provisions of [the] Judgment and any subsequent instructions or orders of the Court hereunder." (*Id.* at ¶ 16.) Notwithstanding the Court's appointment of a Watermaster, "[f]ull jurisdiction, power and authority" were retained and reserved to the Court. (*Id.* at ¶ 15.)

Rounding out the tiered structure for ongoing Basin management, the Judgment also provided for the creation of Pool Committees and an Advisory Committee to assist Watermaster in the performance of its duties under the Judgment. (RJN, Ex. 1 at ¶ 32.) There are three separate Pool Committees consisting of parties with similar water rights within the Basin, namely: (1) the Appropriative Pool, consisting of public entities and public and private companies, (2) the Nonagricultural Pool, consisting of industrial and commercial businesses, and (3) the Agricultural Pool, consisting of agricultural businesses. Pursuant to the Judgment, each Pool Committee has "the power and responsibility for developing policy recommendations for administration of its

particular pool." (*Id.* at ¶ 38(a).) For its part, the Advisory Committee is charged with studying, and has the power to recommend, review, and act upon, discretionary determinations made or to be made by Watermaster. (*Id.* at ¶ 38(b).)

Over time, the Judgment has been further modified by subsequent agreements and Court Orders including, without limitation, the Peace Agreement (RJN, Ex. 30), the First Amendment to the Peace Agreement (*id.*, Ex. 31), the Second Amendment to the Peace Agreement (*id.*, Ex. 32), and the Chino Basin Watermaster Rules and Regulations (*id.*, Ex. 2). Collectively, these decisions and agreements form the backbone for governance of the Basin and dictate required procedural processes for decision-making and financial obligations affecting Basin management.

B. The Watermaster Approval Process

To protect the interests of parties, and to safeguard water resources within this critical Basin, the Judgment and Orders in effect mandate a robust procedural and substantive decision-making process. This structure is perhaps most important for the rules and standards applicable to the storage and withdrawal of groundwater from the Basin.

Watermaster does not have unfettered discretion and its authority is constrained by the terms of the Judgment and subsequent Court Orders, including ongoing oversight by the Court through the exercise of the Court's continuing jurisdiction. "Subject to the continuing supervision and control of the Court, Watermaster shall have and may exercise the express powers, and shall 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." (RJN, Ex. 1 at ¶ 17.) The Judgment and Orders include procedural and substantive requirements relating to proposed Watermaster actions, and include detailed written application, notice, analysis, and approval processes in the Watermaster Rules and Regulations, as well as specific requirements pertaining to approvals of groundwater storage agreements.

As noted previously, Paragraph 38(b) of the Judgment defines the role of the Advisory Committee. Its role is part of an extensive review-and-approval process pertaining to storage and recovery projects, including provisions for written notice of pending applications, circulated summaries and analyses of the proposed actions, and consideration of the proposed actions by the

Pool Committees and the Advisory Committee. (RJN, Ex. 2 at Article X.) There is no authority for Watermaster to bypass these procedures and, indeed, Watermaster can take certain actions only upon the recommendation or advice of the Advisory Committee, including action on an agreement. Specifically, Watermaster must give notice and conduct a meeting prior to executing an agreement not within the scope of an Advisory Committee recommendation. (*Id.*, Ex. 1 at ¶ 38(b)[2].) Further, written groundwater storage agreements are specifically required to go through a prescribed approval process as detailed in the Recommendation of Special Referee to the Court as follows:

> The Judgment enjoins storage or withdrawal of stored water "except pursuant to the terms of a written agreement with Watermaster and [that] is [in] accordance with Watermaster regulations." (Judgment ¶ 14.) The Court must first approve, by written order, the Watermaster's execution of "Ground Water Storage Agreements." (Judgment ¶ 28.) The Advisory Committee's role is limited to giving its approval before the Watermaster can adopt "uniformly applicable rules and a standard form of agreement for storage of supplemental water." (*Id.*) However, groundwater storage rules and the standard form of agreement must be "uniformly applicable", which intrinsically leaves to the 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 parties 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.

(*Id.*, Ex. 3 at p. 12, fn. 8.) Notably, precedent exists for the implementation of the formal Watermaster Approval Process with respect to the DYY Program. As addressed more fully herein, the Watermaster Approval Process was followed when the DYY Program was first developed, and again in 2015 when an amendment (referred to herein as "Amendment 8") was approved. (*Id.*, Ex. 19.) However, the Watermaster Approval Process was completely bypassed when the 2019 Letter Agreement was negotiated and signed.

C. The Court-Approved DYY Program

The DYY Program is based on a set of three agreements approved by the Court: the 2003 Funding Agreement, the 2004 DYY Storage Agreement, and individual Local Agency Agreements

(also referred to as Operating Agreements).[4] Each is detailed below.

1. The 2003 Funding Agreement and Court Order Approving the 2003 Funding Agreement

A Groundwater Storage Program Funding Agreement ("2003 Funding Agreement") was approved through the Watermaster Approval Process (Pool Committees, Advisory Committee, and Watermaster Board) in February 2003, and then was signed by the Metropolitan Water District ("Metropolitan"), IEUA, Three Valleys Municipal Water District ("TVMWD"), and Watermaster. (RJN, Ex. 1; Declaration of Courtney Jones ("Jones Decl."), ¶¶ 19-24, Ex. 3.) This 2003 Funding Agreement described the proposed project and served as the basis for what eventually became the DYY Program.[5] At a basic level, this conjunctive use program allowed Metropolitan to store up to 100,000 acre feet ("AF") of water in the Basin and allowed Metropolitan to request participating agencies to pump up to 33,000 AF during a "call" year. (RJN, Ex. 11 at ¶ IV.A.1.a.) The objective of this groundwater storage and recovery program was to provide greater water supply flexibility and reliability in dry years by storing water in advance of dry periods and pumping stored water in lieu of receiving imported water deliveries during drought years.

The 2003 Order Concerning Groundwater Storage Program Funding ("2003 Order") represented the first step in the development of the DYY Program and also explicitly recognized that actual implementation of the DYY Program would require future storage agreements approved through the formal Watermaster Approval Process:

> As noted, Watermaster indicates that approval of a Storage Agreement will be in "the form of Watermaster approval of the Local Agency Agreements by way of a Storage and Recovery Application filed under Article X of Watermaster's Rules and Regulations." It is not clear to the Court how or in what form this approval process will be conducted. However, it is clear that until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application, or some equivalent

[4] A history of the DYY Program approval process, including the adoption of amendments, additionally are detailed in the Jones Declaration at paragraphs 19-31.

[5] The 2003 Funding Agreement also described the "Chino Basin Conjunctive Use 'Dry Year' Storage Project Performance Criteria." (RJN, Ex. 11 at Ex. G.) However, this represents the performance criteria as dictated by Metropolitan to be performed by IEUA and TVMWD. IEUA and TVMWD are not local water producers and these criteria actually are placed onto their member agencies to perform. (Jones Decl., ¶ 26.)

> approval process is completed, the storage and recovery program cannot be undertaken.

(RJN, Ex. 12 at 3:18-25.) In sum, the proposed DYY Program could not be implemented unless and until the parties complied with this approval process

2. Local Agency Agreements, the Storage and Recovery Application, and the Court's 2004 Approval of the Storage Agreement

Consistent with the terms of the Court's 2003 Order, the DYY Program approval process continued. From March to July 2003, Local Agency Agreements were executed between IEUA, TVMWD, and their member agencies.[6] (RJN, Exs. 13-15; Jones Decl., ¶ 25.) These Local Agency Agreements serve as the foundation of the storage and recovery program and include at their core defined terms governing the parties' performance obligations. Each Local Agency Agreement contains an "Exhibit A" that specifies each agency's facilities to be used as part of the DYY Program, and an "Exhibit B" describing each agency's targets for both the reduction in imported water demand and the corresponding increase in local groundwater pumping. (See RJN, Exs. 13-15 at Exs. A-B; Jones Decl., ¶ 26.)

Also consistent with the 2003 Order and to advance the proposed DYY Program, in April 2003 IEUA submitted an application under Article X of the Watermaster Rules and Regulations for a 100,000 AF storage account in Watermaster's Storage and Recovery Program. (Jones Decl., ¶ 27; see also RJN, Ex. 17 at 13:16-18.) This storage account would be used to implement the terms of the Funding Agreement and Local Agency Agreements. Pursuant to the Watermaster Approval Process, Watermaster provided formal notice of the application, and the application and the Watermaster's analysis were considered in Pool Committee meetings, by the Advisory Committee, and by the Watermaster Board. (RJN, Ex. 16.) Concurrent with this process, and consistent with the Judgment, technical consultants Wildermuth Environmental, Inc. also conducted an analysis to

[6] The member agencies are: CVWD, City of Pomona, City of Chino Hills, City of Chino ("Chino"), Monte Vista Water District, Ontario, City of Upland, and Jurupa Community Services District ("JCSD") via Ontario. (Jones Decl., ¶ 25.) Notably, Opposing Party FWC does not have a Local Agency Agreement. (*Ibid.*)

ensure that the DYY Program would not cause material physical injury to the Basin. (*Id*. at p. 1.) The results of the technical analysis were presented in August 2003, and approved through the Watermaster Approval Process in October 2003, again involving the Pool Committees, the Advisory Committee, and the Watermaster Board. (*Id*. at pp. 1-2; see also *id.*, Ex. 17 at 21:9-22.) At the conclusion of this process, the Pool Committees unanimously recommended that the Advisory Committee and Watermaster Board approve the storage agreement and directed legal counsel to file the storage agreement with the Court for final approval. (*Id.*, Ex. 16 at p. 2.)

Watermaster subsequently filed a Notice of Motion for Approval of Storage and Recovery Program Agreement ("DYY Storage Agreement"), and the Court entered an Order Approving the DYY Storage Agreement ("2004 Order"). (See RJN, Exs. 17-18.) Importantly, the 2004 Order recognized four fundamental principles applicable to the DYY Program moving forward: (1) that the program have broad mutual benefits to the parties to the Judgment (*id.*, Ex. 18 at p. 2), (2) that no use shall be made of the storage capacity of the Basin except pursuant to a written agreement (*id.* at p. 3), (3) that approval of storage agreements would be through the formal Watermaster Approval Process (*id.* at p. 4), and (4) that the terms must include provisions to ensure that there will not be adverse impacts to other producers in the Basin (*id.* at p. 3). As held by the Court:

> The Judgment provides that no use shall be made of the storage capacity of Chino Basin except pursuant to written agreement with Watermaster. (Judgment, ¶ 12.) The Judgment further provides that the reservoir capacity of the Basin may be utilized for storage and conjunctive use of supplemental water, if undertaken under Watermaster control and Regulation. (Judgment, ¶ 11.) Finally, the Judgement provides that agreements for storage "shall first be approved by written order of the court" and must include terms that will "preclude operations which will have a substantial adverse impact on other producers." (Judgment, ¶ 28.)

(*Id.*, Ex. 18 at 3:2-9.) Based on the above, and the Court's related finding that the DYY Storage Agreement is unlikely to have any adverse impacts on a party to the Judgment, the Court entered the 2004 Order approving the DYY Storage Agreement.

It also is important to note that the intent of this program was to provide broad benefits to parties in the Basin. The Court stated in its approval of the Peace Agreement that Watermaster must prioritize storage and recovery programs that provide broad mutual benefits. Consistent with this, in both the 2003 and 2004 Orders, the Court made specific findings that the DYY Program will

have broad mutual benefits to the parties to the Judgment. (*Id*., Ex. 12 at pp. 4-6; see also *id*., Ex. 18.)[7]

Fundamentally, the Local Agency Agreements and DYY Storage Agreement ***are*** the DYY Program, and any substantial changes that affect those agreements or the DYY Program must be approved through the Watermaster Approval Process. Pertinent to the present case, "[a]ny modification of facilities that is materially different than those contemplated by the Local Agency Agreements *will require the filing of a new application*." (RJN, Ex. 17 at Ex. A, ¶ III.A.2 (emphasis added).) The 2003 Order also requires that any Local Storage Agreement must be "analyzed by Watermaster under the Material Physical Injury standard of the Peace Agreement and Rules and Regulations." (*Id*., Ex. 12 at 3:4-7.)

3. <u>Amendments to the 2003 Funding Agreement</u>

During the initial project development there were several amendments to the 2003 Funding Agreement that were ministerial and pertained primarily to timing for the completion of facilities and changes to the sources of funding. (Jones Decl., ¶ 7; RJN, Ex. 25 at p. 2.) Because these amendments did not include material changes to the agreement, the first seven amendments to the 2003 Funding Agreement were handled administratively. However, the eighth amendment made material and substantive changes to the DYY Program impacting local agency performance – the formula and criteria to establish a groundwater baseline. Specifically, Amendment 8 included changes to the parties' performance criteria in Exhibit G including measures "to reduce imported water deliveries to the Operating Parties and to replace it with stored Chino Basin groundwater." (RJN, Ex. 19 at Ex. G.) For that reason, Amendment 8 was adopted only after it successfully made its way through the Watermaster Approval Process including unanimous recommendations for approval by the Pool Committees and approval by the Watermaster Advisory Committee and

[7] In contravention of those Orders, the 2019 Letter Agreement benefited only a few at the expense of many. It also negatively impacted the broad-based benefit of the DYY Program, which is to provide greater water supply reliability by storing water in advance of dry periods and pumping the stored water in lieu of receiving imported water during droughts. Considering the current historic drought, a participating agency's ability to access imported water has been greatly impacted by allowing the DYY Program storage account to be drained prematurely.

Watermaster Board. (*Id*., Ex. 25 at p. 1.)

Notably, Amendment 8 did not change the facilities being utilized (e.g., where the groundwater would be pumped) nor the quantities of water being produced, and ***still*** went through the Watermaster Approval Process and resulted in an amendment to the Local Agency Agreements. In contrast, the 2019 Letter Agreement at issue here made substantive, material changes to the DYY Program, including with respect to the facilities being used and the quantity of groundwater being produced from the Basin, and yet was ***not*** approved through the Watermaster Approval Process and was executed only by the Funding Agreement Parties (e.g., no amendments were made to the Local Agency Agreements). (Jones Decl., ¶ 6.)

4. <u>The 2019 Letter Agreement</u>

a. <u>The approval and execution of the 2019 Letter Agreement did not comply with the Watermaster Approval Process.</u>

In 2018, Opposing Party IEUA initiated discussions regarding proposed revisions to the DYY Program. (Jones Decl., ¶ 32.) The modifications would significantly change the DYY Program by allowing voluntary production out of the DYY Program storage account without a corresponding reduction of imported deliveries. (*Ibid*.) These changes represented a departure from the approved performance criteria as set forth in the Local Agency Agreements and, as eventually implemented, led to unprecedented amounts of DYY Program groundwater production by an agency. (*Ibid*.) It also led to an agency (Opposing Party FWC) *that did not have a Local Agency Agreement* participating in the DYY Program and withdrawing groundwater from the DYY Program storage account. In short, the 2019 Letter Agreement, as implemented, resulted in material changes to the DYY Program including foundational changes affecting the amount of water each agency was allowed to produce, and when and how that water was recovered from the Basin. Notwithstanding that fact, and unlike the approval and implementation process associated with Amendment 8, the 2019 Letter Agreement was not approved through the Watermaster Approval Process, was signed only by signatories to the 2003 Funding Agreement, and was executed without a corresponding amendment to the Local Agency Agreements. (*Id*. at ¶¶ 6, 33.) Not only was there a complete failure to comply with required approval processes, presentations by Watermaster at the

time included material misrepresentations that masked the scope of what was being negotiated, including statements by the Watermaster General Manager that the proposed changes in the 2019 Letter Agreement "don't commit Watermaster to anything." (*Id*. at Ex. 4 at 3:5-12.)

As addressed above, the Watermaster Approval Process required notice to all parties of the proposed amendment to the DYY Program. (See, e.g., RJN, Exs. 1 (¶ 59), 2 (§ 2.7), 3 (pp. 18-19, fn. 12).) Under the Judgment, Watermaster must notify the Advisory Committee of "any discretionary action, other than approval or disapproval of a Pool committee action or recommendation properly transmitted." (*Id*., Ex. 1 at ¶ 38(b)[2].) Watermaster also must notify the Advisory Committee if it proposes to execute any agreement not within the scope of an Advisory Committee recommendation "since the Watermaster generally can 'cooperate' with other agencies only upon 'prior recommendation or approval of the Advisory Committee.'" (*Id*., Ex. 3 at p. 19, fn. 12 (citing Judgment, 26).)

In September 2018, the topic of the letter agreement was listed as "Proposed Changes to DYY Program Operation" under the General Manager's Report in the Pool Committees, Advisory Committee, and Watermaster Board meeting packages. (See RJN, Exs. 34-36.) However, it was not accompanied by a staff report and the General Manager's report was only verbal and obfuscated both the scope and the implications of what was under consideration. (Jones Decl., Exs. 4 (3:5-4:7), 5 (3:7-8), 6 (3:5-17).) At the September 13, 2018 Appropriative Pool meeting, the Watermaster General Manager provided an informal report to the Board regarding the proposed amendment as follows:

> [W]e do plan to sign [the letter] on behalf of Watermaster if it's necessary for acknowledgement…. *The changes don't commit Watermaster to… anything. We actually don't think a letter is even required.*

(*Id*., Ex. 4 at 3:9-13 (emphasis added).) Again, at the September 20, 2018 Advisory Committee meeting, the Watermaster General Manager simply reported on the amendment as follows: "My report is the same as last week to the Pools." (*Id*., Ex. 5 at 3:7-8.) One week later, at the September 27, 2018 Watermaster Board meeting, the Watermaster General Manager reported on the amendment as follows:

> [Metropolitan] has proposed some changes that are favorable to the parties. *We don't believe they constitute a change to the agreement, so we don't intend to bring an agreement amendment to the board*. There may be an acknowledgement letter. If there is, I wanted to let you know that I would be signing that acknowledgement letter.

(*Id*., Ex. 6 at 3:10-17 (emphasis added).) Again and again, the full scope and impact of the proposed amendment was kept from parties, including Ontario, that eventually would be affected.

In its Opposition to the Application, IEUA argues through the submitted declaration of Elizabeth Hurst that there were "[n]o objections to the proposed voluntary withdrawal system language from the City of Ontario … after July 30, 2018," but the truth is that Ontario expressly reserved all objections because it was impossible at the time to gauge the full impact of what was being proposed. (Declaration of Elizabeth Hurst ("Hurst Decl.), filed Mar. 24, 2022, ¶ 13.) In correspondence on July 31, 2018 with Opposing Party IEUA, Ontario explained:

> As long as there are parameters that are undecided or unclear, *Ontario cannot take a position of support because we cannot know the full effects of the proposed changes*. Without these details, which would best be explained and memorialized in an amendment, we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise.

(Jones Decl., ¶ 34, Ex. 7 (emphasis added).) In the absence of notice and information that ordinarily would have been, and should have been, provided to parties through the Watermaster Approval Process, Ontario and other parties had no ability to assess potential adverse impacts to their interests.

The Watermaster General Manager subsequently executed the 2019 Letter Agreement between Metropolitan, IEUA, and TVMWD on February 19, 2019 and provided no formal notice of its action as required by the Judgment and Rules and Regulations. (RJN, Ex. 41.)[8]

[8] Because Watermaster failed to provide notice of the 2019 Letter Agreement as required, there was never an "Effective Date" to commence the accrual of the 90-day time period to challenge the approval of said agreement as discussed in Section IV.B., below.

b. <u>The 2019 Letter Agreement fundamentally changed the recovery side of the DYY Program.</u>

The purpose of the DYY Program is for participating agencies to replace imported water supplies with groundwater during dry years. To provide parameters for the operation of the DYY Program, Exhibit G to the DYY Storage Agreement includes specific performance criteria ("Exhibit G Performance Criteria"), which are used to ensure that the groundwater produced out of the DYY Program storage account is produced in lieu of using imported water. (RJN, Ex. 11 at Ex. G.) Put another way, Exhibit G Performance Criteria for the DYY Program provides for a balanced formula – it calls for the reduction of imported water deliveries and the corresponding replacement of that water with stored Basin groundwater. The 2019 Letter Agreement changed the application of the Exhibit G Performance Criteria and, for the first time, allowed for more water to be recovered outside of the Local Agency Agreements without a corresponding change or reduction in imported water supplies. (*Id*., Ex. 41 at p. 2.) Specifically, the 2019 Letter Agreement inserted a term allowing for "voluntary" or discretionary withdrawals, thus bypassing the Exhibit G Performance Criteria. This represented a material change to the DYY Program.

Particularly given the decision to bypass the Watermaster Approval Process, there was nothing at the time of execution of the 2019 Letter Agreement to put other parties, including Ontario, on notice of the extent of the impacts that would stem from that informal agreement. And there certainly was no notice that:

- Parties (including Opposing Party CVWD) would be allowed to unilaterally decide to effectively double their annual participation "take" capacity or withdrawals from the DYY Program. (In the year at issue here, CVWD produced over 20,000 AF of water even though it was only authorized to produce 11,000 AF in any year.)[9]
- Parties without a Local Agency Agreement would be allowed to participate in the

[9] The 2019 Letter Agreement does not state that parties can voluntarily take more than their regular allotment. Moreover, in 2018, in response to an email from Ontario, IEUA suggested that parties' regular allotments or take capacities would not increase: "[A]ttached are the scenarios presented at the May Water Manager's meeting, illustrating how % performance requirement would be allocated during call years and would <u>not</u> result in an increased performance requirement beyond the existing DYY agreement (as outlined in Amendment #8)." (Hurst Decl., Ex. A (emphasis in original).)

DYY Program and make withdrawals from the DYY Program storage account. (Opposing Party FWC does not have a Local Agency Agreement, but last year claimed approximately 2,500 AF in production from the DYY Program.)

- New terms, not included in the 2019 Letter Agreement, would be "written into" the Letter Agreement after the fact regarding assessments, thus financially benefitting Opposing Parties CVWD and FWC, which produced more groundwater from the DYY Program than allowed. (The 2019 Letter Agreement is silent on the handling of assessments, but the 2021/2022 Assessment Package waived Watermaster and Desalter Assessments on this production by CVWD and FWC.)

There was simply no way that Ontario could have been on notice of these potential impacts when the Letter Agreement was executed in 2019. Indeed, nothing in the 2019 Letter Agreement either speaks to or permits such material expansions of the DYY Program.

Not only were the potential financial and other impacts unknown in 2018-2019, even worse, the Watermaster General Manager misrepresented the impact of the 2019 Letter Agreement at the time it was being executed. Indeed, in verbal briefings to the Pool Committees, the General Manager for Watermaster affirmatively represented that there would be no impacts. (Jones Decl., Ex. 5 at 3:20-4:2.) As it turned out, however, there were to be significant impacts on other parties, including improper cost-shifting that only became fully apparent in the 2021/2022 Assessment Package.

5. Assessments and the Injury to Ontario Stemming from the 2021/2022 Assessment Package

a. All water produced from the Basin is assessed.

The cost of implementing the physical solution and managing this Basin is not cheap and it is not free. To pay for it, the Judgment and Court Orders explicitly provide that all water produced from the Basin must be assessed.

The amount that each party is assessed is principally based on the amount of its individual groundwater production. (RJN, Ex. 1 at ¶ 53 ("Watermaster shall have the power to levy assessments against the parties (other than minimal pumpers) based upon production … .").) The governing documents for the Basin define groundwater production that is subject to assessments in the broadest possible terms: "Produce or Produced – To pump or extract ground water from Chino

Basin" and "Production – Annual quantity, stated in acre feet, of water produced." (*Id.* at ¶ 4(q), (s).) Further, the assessments are mandatory and must be uniform. Under the Watermaster's Rules and Regulations, "Watermaster shall levy assessments against the parties … based upon Production during the preceding Production period. The assessments shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool." (*Id*., Ex. 2 at art. IV, § 4.1; see also *id.*, Ex. 1 at ¶ 53.) Although the Watermaster Rules and Regulations allow for limited assessment adjustments, the exceptions do not apply to production from the DYY Program. (*Id*., Ex. 2 at § 4.4; Jones Decl., ¶ 44.)

Not only is all production assessed, there have been no distinctions made – neither within the governing documents nor in the actual assessments levied – between native groundwater, stored groundwater, and supplemental water. Indeed, supplemental water, including recharged recycled water, was part of Opposing Party FWC's assessable production. (Jones Decl., ¶60.) Imported water, including imported water purchased for replenishment purposes, also has been assessed.[10] (*Id*. at ¶ 47.) Further, even the first cycle of DYY Program water was assessed for production years 2002/2003 to 2010/2011 under the approved Assessment Packages. (*Id*. at ¶¶ 44-52.) It was only in the second cycle of the DYY Program, including in the fiscal year 2021/2022 Assessment Package at issue here, that DYY Program production was not assessed, resulting in improper cost-shifting to other parties. (RJN, Ex. 53-60.)

b. By excluding DYY Program production for the purpose of calculating parties' individual assessments within the 2021/2022 Assessment Package, Watermaster shifted responsibility for those payments to others, including Ontario

(1) Assessment of Watermaster fixed costs

Watermaster's failure to count DYY Program water as "produced" water for purposes of calculating assessments resulted in a windfall to Opposing Parties CVWD and FWC, and burden-shifting onto Ontario and others that now are being asked to pay substantially more – over $2.6

[10] Water was assessed either on the front end when put into the Basin or on the back end once produced from the Basin.

million more – than their fair share.[11] The expense of operating the Basin is fixed based on an annual budget and must be paid. (RJN, Ex. 1 at ¶ 54; Jones Decl., ¶ 60.) This includes "General Watermaster Administrative Expenses" and "Special Project Expenses" (collectively, "Watermaster Fixed Costs"). (RJN, Ex. 1 at ¶ 54.) The Watermaster Fixed Costs are assessed to the parties based on each party's total groundwater production and exchanges ("production") during the prior year. (*Id.*, Ex. 60 at p. 10.1.) To calculate the amount due by each party, the total of Fixed Costs is divided by the annual total production number of all parties in the Basin to obtain a dollar amount per acre foot of water. (Jones Decl., ¶ 62.) This unit cost is then used to assess each party, based on its individual production. Since the costs are fixed, when the annual total production number increases, the unit cost decreases, and, conversely, when the total annual production number decreases, the unit cost increases. (*Ibid.*) Accordingly, in exempting a party's DYY Program production from that party's groundwater production, Watermaster is directly increasing the unit cost for everyone, and reducing the proportional share of these expenses charged to a party claiming DYY Program production credit. (*Ibid.*)

The following table demonstrates how costs are shifted away from one party onto other parties when the total production number is reduced because higher than allowed DYY Program production is claimed and decreases the total production, thus increasing the overall unit cost. This results in the Fixed Costs being shifted from the parties claiming DYY Program production (e.g., CVWD who reduced its assessed annual production by the 20,500 AF of claimed DYY Program production) to Ontario and other parties in the Basin.

Chino Basin Parties	Actual FY Production (AF)	DYY Production Claimed (AF)	Total Production and Exchanges (AF)	Fixed Costs Shifted
CVWD	26,225.70	20,500.00	5,725.70	-$1,084,539
FWC	13,565.30	2,500.00	11,065.30	$8,229
Ontario	17,171.10		17,171.10	$279,078
Other Parties	64,844.10		64,844.10	$797,233
TOTAL	**121,806.20**	**23,000.00**	**98,806.20**	**$0.00**

[11] Importantly, this in not just a one-year injury. Absent intervention by the Court, the improper cost-shifting at issue has the potential to continue, year after year. (Jones Decl., ¶ 62.)

Notes:
The total annual fixed cost is assumed at $6,967,848 and total production and exchanges is 98,806 AF for a unit cost of $70.52/AF.
DYY claims decreased the total production from 121,806 to 98,806 which increased unit cost from $57.20/AF to $70.52/AF = $13.32/AF.

(RJN, Ex. 60.)

This cost-shifting resulted in over a $1 million reduction in the amount CVWD was required to pay, thus shifting this obligation to the other parties. (Jones Decl., ¶¶ 62-63.)

(2) Assessment of remaining desalter replenishment obligations

Other Fixed Costs relating to Basin operations also are calculated based on each party's production for the Basin. This includes the calculation of a party's share of Desalter Replenishment Obligations ("RDRO"). RDRO is an annual fixed obligation that must be replenished by Appropriative Pool Parties – again, including Ontario and Opposing Parties CVWD and FWC. The share of responsibility is divided between the parties based on each party's adjusted physical production and its share of the safe yield. (Jones Decl., ¶ 65.) Just as in the case of the apportionment of Watermaster Fixed Costs, above, when one party has a reduced adjusted physical production (in this case a reduction due to DYY Program production claims), then that party's share of RDRO also is proportionately reduced and shifted to the other parties.[12] This results in a direct and substantial financial injury to other parties, including Ontario. (*Id*. at ¶ 67.)

The table below calculates the cost-shifting of RDRO that occurs when one party is allowed to reduce its physical production by its DYY Program production thus decreasing that party's

[12] There was an amendment to the Peace Agreement in 2019 allowing water produced from "approved" storage and recovery programs to be subtracted from a party's actual physical production for purposes of this calculation. However, the second cycle of the DYY Program at issue here was improperly operated based on Watermaster and Opposing Parties' expanded interpretation of the 2019 Letter Agreement, including new terms written into that letter agreement that were used to justify doubling Opposing Party CVWD's production and Opposing Party FWC's withdrawals. But because the 2019 Letter Agreement was not lawfully approved, the only operative, approved DYY Program agreement was the one in effect as of the 2015 Amendment 8 that was approved through the Watermaster Approval Process. Under the operative 2015 DYY Program agreement, Opposing Parties would not be able to claim or discount their DYY Program production amounts as they did in the 2021/2022 assessment period.

proportional share of RDRO. The "Share of RDRO 16,879.4 AF Shifted" column represents the net increase or decrease in each party's obligation. In this example, CVWD's share of the RDRO obligation was 2,265 AF less than it would have been if it did not claim any DYY production.

Appropriative Pool Parties	Actual FY Production (AF)	DYY Claimed (AF)	Total Adjusted Physical Production (AF)	Share of RDRO 16,879.4 AF Shifted	Financial Impact due to RDRO Shifting
CVWD	26,225.70	20,500.00	5,725.70	-2,264.90	-$1,518,984
FWC	13,565.30	2,500.00	11,065.30	-40.10	-$26,887
Ontario	21,750.80		18,656.80	638.00	$427,890
Other Parties	43,498.20		41,207.40	1,667.00	$1,117,981
TOTAL	**105,040.00**	**23,000.00**	**76,655.20**	**0.00**	**$0.00**

Notes
The value of RDRO water is assumed to equal the cost to purchase replenishment water at $670.65/AF

(RJN, Ex. 60.) Inflated claimed DYY Program production works to shift responsibility for RDRO assessment from the party claiming higher DYY Program production to other parties.

Watermaster allowed Opposing Parties CVWD and FWC to use the 2019 Letter Agreement – that was not approved through the required Watermaster Approval Process and did not contain ***any*** terms modifying responsibility for assessments – to avoid their obligations to pay their required fair share of Watermaster Fixed Costs and RDRO. Under its Local Agency Agreement, Opposing Party CVWD is only entitled to take 11,353 AF of DYY Program production per year, and yet it claimed 20,500 AF of DYY Production and used that higher number to substantially reduce its assessed production and its corresponding financial obligations for the 2021/2022 assessment year. For its part, Opposing Party FWC does not even have a Local Agency Agreement, and yet it still claimed 2,500 AF of DYY Program production and leveraged that deduction to reduce its financial obligations in the 2021/2022 assessment year. In sum, in approving the 2021/2022 Assessment Package, Watermaster sanctioned Opposing Parties' strategy to offload their financial responsibilities to other parties – forcing others, like Ontario, to absorb the impact. (Jones Decl., ¶ 51-67.) In the 2021/2022 year alone, this amounted to $2,622,181.00. (*Id*. at ¶¶ 63, 67.)

III. STANDARD OF REVIEW

"Under paragraph 31 of the Judgment, the Court's review of any Watermaster action or decision is 'de novo.'" (RJN, Ex. 12 at 4:2-3.) While the "Watermaster's findings, if any, may be received as evidence at the hearing or trial," such evidence "shall not constitute presumptive or prima facia [sic] proof of any fact in issue." (*Id.* at 4:3-5.) Under this standard of review, and consistent with the Judgment, the Court is required to look at the evidence anew. (*Id.* at 4:7; see, e.g., *Littoral Dev. Co. v. S.F. Bay Conservation & Dev. Comm'n* (1994) 24 Cal.App.4th 1050, 1058, as modified on denial of reh'g (May 26, 1994).) Similarly, as held by the court in *Littoral* on the issue of statutory interpretation, the courts will exercise de novo review and are not bound by the agency's own interpretation of its jurisdiction as specified by legislation. (*Cal. Ass'n of Psych. Providers v. Rank* (1990) 51 Cal.3d 1, 11.)

IV. LEGAL ANALYSIS PERTAINING TO CHALLENGE OF WATERMASTER ACTION

A. The Court Has Exercised its Jurisdiction to Overturn Watermaster's Actions When Watermaster Exceeds its Authority

For this Basin to continue to function properly, the parties must be able to rely on the integrity and enforceability of the Judgment and Orders, including Watermaster's strict adherence to those governing documents as an arm of this Court. Unfortunately, however, this is not the first time this Court has been called upon to check Watermaster's exercise of its authority and direct Watermaster to follow the Court's Judgment and Orders. Indeed, there is precedent within this adjudication authorizing the Court to intervene when Watermaster exceeds its authority and acts in a manner that is inconsistent with Court Orders. In those instances, this Court has not hesitated, notwithstanding the passage of time, to correct Watermaster's misinterpretation and misapplication of the Judgment and Court Orders. This Court should not hesitate to do the same now.

The Court's continuing jurisdiction and authority under the Judgment is broad and clear. The Court has "[f]ull jurisdiction, power and authority . . . as to all matters contained in the judgment" and the Court is authorized "to make further or supplemental orders or directions as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment." (RJN, Ex. 1 at ¶ 15.) Neither the Judgment nor any other source of authority raised by Watermaster

prevents the Court from exercising its continuing jurisdiction to reevaluate its orders and to determine if Watermaster's actions are authorized by the Judgment and court-approved agreements. Indeed, this is the express purpose of exercising continuing jurisdiction. (*City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 937 ["[R]etention of jurisdiction to meet future problems and changing conditions is recognized as an appropriate method of carrying out the policy of the state to utilize all water available."].) Courts also have broad inherent authority to reconsider their rulings and orders when the issues encompassed by those rulings and orders are within their jurisdiction. (See *Brown, Winfield & Canzoneri, Inc. v. Superior Ct.* (2010) 47 Cal.4th 1233, 1247 [trial courts have inherent authority to reconsider their previous interim orders]; *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1096-1097 [same].)

Here, the actions taken by Watermaster with respect to the 2019 Letter Agreement and 2021/2022 Assessment Package are improper because Watermaster failed to comply with the procedures required by the Judgment and governing documents. Consistent with the Court's authority under its continuing jurisdiction, when such unauthorized actions have arisen in the past, this Court has refused to allow the continued implementation of Watermaster's erroneous interpretation, *even when the practice had been carried out for years.*

In 2015, Watermaster filed a Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6 ("SYRA Motion"), which sought to reset the safe yield of the Basin from 140,000 acre feet per year ("AFY") to 135,0000 AFY and to approve the 2015 Safe Yield Reset Agreement. (RJN, Ex. 9 at 12:16-27.) The SYRA Motion was opposed by Chino and JCSD. (*Id*. at 3:8-16.) After extensive briefing over the course of over 15 months, the Court issued its final rulings and orders on the SYRA Motion on April 28, 2017 ("SYRA Ruling"). (RJN, Ex. 9.) In the SYRA Ruling, the Court granted the motion with respect to amending the Judgment to reset the safe yield of the Basin to 135,000 AFY but denied all other parts of the motion including the continued allocation of surplus Agricultural Pool water ("allocation scheme") in the manner Watermaster contended was authorized by prior Court orders.[13] (*Id*. at pp. 1-2, 49-51; see

[13] Watermaster contended that the proposed allocation scheme or surplus Agricultural Pool water was authorized by "Section 6.3(c) of the Watermaster Rules and Regulations, as amended

also *id.*, Ex. 156 at 2:1-11.)

In its briefing, Watermaster argued that the continued allocation of surplus Agricultural Pool water was authorized by the Court's prior October 8, 2010 Order and had been carried out for years, and the consequences of not approving SYRA as challenged by Chino and JCSD, would effectively "unwind accounting, court approvals, and agreements impliedly if not expressly made in reliance thereon." (RJN, Ex. 8 at 3:20-21.) The Court rejected this argument outright and held that "Watermaster is relying on its own interpretation of its own rules and regulations which the court does not accept" and as a result "[t]he court has clarified its October 8, 2010 Order." (RJN, Ex. 156 at 56:14-16.) The Court further issued the following admonishment to Watermaster for its rogue actions:

> Watermaster cannot use its own interpretation of the court's orders to contradict the court's interpretation. The final decision is the court's, not Watermaster's.

(*Id*. at 56:17-19.)

> Watermasters [sic] erroneous interpretation of the order of priorities is not a basis to continue that erroneous interpretation. If Watermaster has to make a reallocation, then it must do so to follow the court's order. A wrong practice can be long-standing, and still be wrong. A wrong practice cannot be the basis of prejudice.

(*Id*. at 57:27-58:3.)

The Court denied the SYRA Motion as to the proposed allocation on the ground that there was no basis in the Judgment or any of the following court orders (i.e., defined Court-Approved Management Agreements) to support it. (*Id.* (see, e.g., *id.*, Ex. 9 at pp. 51-52).) The same result should follow here given Watermaster's failures. Watermaster does not have authority independent from the Court and completely lacked the authority to bypass the Watermaster Approval Process and enter into a "letter agreement" that materially modified existing DYY Program Orders and

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pursuant to the Peace II Measures" and the October 8, 2010 Order Approving Watermaster's Compliance with Condition Subsequent Number Eight and Approving Procedures to be Used to Allocate Surplus Agricultural Pool Water in the Event of a Decline in Safe Yield. (RJN, Ex. 8 at 3:15-19.)

Agreements. This Court should exercise its discretion and continued authority to correct Watermaster's errors.

B. Watermaster Failed to Provide Notice Regarding the 2019 Letter Agreement and Failed to Comply With the Mandatory Watermaster Approval Process

For Watermaster action to be effective, it must follow proper notice procedures, as set forth in the Judgment and Watermaster Rules and Regulations. Watermaster failed to follow these procedures regarding execution of the 2019 Letter Agreement, rendering it defective and unenforceable.

1. Watermaster Failed to Provide the Required Notice of Watermaster's Decision to Approve the 2019 Letter Agreement

Both the Judgment and Watermaster Rules and Regulations contain multiple provisions requiring written notice to parties of Watermaster actions. Paragraph 31(a) of the Judgment provides that a Watermaster action, decision, or rule is only deemed to have occurred upon the date of written notice, and Paragraphs 58 and 59 provide detailed processes for notice and service of notices to parties. (See RJN, Ex. 1.) The implementing Watermaster Rules and Regulations, also detail specific notice requirements, including in Section 2.7. (*Id*., Ex. 2.) In application, Watermaster's regular practice for noticing actions has been to provide interested parties with an email titled "NOTICE," information regarding what the notice related to, and a draft of the proposed action.

Because the execution of the 2019 Letter Agreement was an action and decision by Watermaster, it was required to provide notice relating to the 2019 Letter Agreement to all active parties including Ontario. Watermaster never did this. Instead, in September 2018, the topic of the letter agreement was listed as "Proposed Changes to DYY Program Operation" under the Watermaster General Manager's Report in the Pools, Advisory Committee, and Watermaster Board meeting packages. (RJN, Exs. 34-36.) However, there was no staff report and the General Manager's report was only verbal and did not disclose the potential terms and impacts of the proposed changes to the DYY Program. As addressed more fully herein, the letter agreement also was not approved through the Watermaster Approval Process and the minutes for these September 2018 Board meetings do not reflect any substantive discussion of the 2019 Letter Agreement. (*Id*.,

Exs. 37-39.) Because Watermaster did not provide the required notice of the execution of the 2019 Letter Agreement, said agreement is both defective and void.

2. Watermaster's General Reference That it Might Execute the 2019 Letter Agreement Did Not Constitute Sufficient Notice

Watermaster's actions have been overturned in the past for failing to provide proper notice to the parties. In 2012, the Nonagricultural Pool Committee appealed the trial court's order that found that Watermaster had provided proper notice to the parties to purchase water from the Nonagricultural Pool. The appellate court overturned the trial court decision holding that Watermaster had not provided proper notice by providing an agenda package that contained a copy of a notice that "was not intended to be effective unless and until it was approved by the Board." (RJN, Ex. 5 at p. 17.) Because the agenda package contained language that the decision to provide notice was to be approved by the Board at a *future* meeting, the "only reasonable interpretation was that Watermaster staff was not *giving* notice." (*Ibid*. (emphasis in original).) "[P]ut [] another way, everything that was communicated … about giving notice or purchasing the water came with the caveat that the Watermaster had not definitively decided to do either; thus, these communications did not constitute notice." (*Id.* at p. 4.) As a result, the appellate court found that Watermaster did not provide sufficient notice of its action and overturned the trial court's ruling. (*Id.* at p. 16.)

Like Watermaster's communication at issue in the 2012 Appeal, Ontario could not reasonably have understood that Watermaster's verbal communications in the September 2018 Pool, Advisory, and Board meetings regarding the DYY Program constituted notice of the terms and impacts of the proposed amendment to the DYY Program when the agreement was not even in existence and the impacts of the amendment were neither fully understood nor disclosed until years later. (See *Stevens v. Dep't of Corrs.* (2003) 107 Cal.App.4th 285, 292 [A person entitled to notice "'is not required to be clairvoyant,'" citation omitted].) This is especially so when what was being reported in the meetings was that Watermaster was not sure whether any action regarding the DYY Program would be taken at all. (Jones Decl., Ex. 6 at 3:10-17 ("The Metropolitan Water District has proposed some changes that are favorable to the parties. We don't believe they constitute a change to the agreement, so we don't intend to bring an agreement amendment to the Board. There

may be an acknowledgement letter. If there is, I wanted to let you know I will be signing that acknowledgement letter.").) Having failed to disclose the nature of the proposed action, and having stated that Watermaster had not even definitively decided *whether* action to sign an agreement would be taken, this notice was defective. (See, e.g., RJN, Exs. 1 (¶ 59), 2 (§ 2.7), 3 (pp. 18-19, fn. 12).) As a result, just like in the 2012 appellate opinion, this Court should find that the Watermaster failed to give either timely or effective notice of the 2019 Letter Agreement.

3. Watermaster Failed to Comply With the Watermaster Approval Process and Therefore Lacked the Authority to Execute the 2019 Letter Agreement

Watermaster did not have the authority to approve the 2019 Letter Agreement at a staff level. As detailed in Section II.B., above, the Judgment and Orders of the Court include very specific procedural and substantive requirements relating to proposed Watermaster actions, including detailed written application, notice, analysis, and approval processes in the Watermaster Rules and Regulations, as well as specific requirements pertaining to approvals of groundwater storage agreements. (*See, e.g.*, RJN, Ex. 1 (¶ 59), 2 (§ 2.7), 3 (pp. 18-19, fn. 12).) The Watermaster Approval Processes were followed both in the initial adoption of the DYY Program, and in the adoption of Amendment 8 that changed material agreement terms. (RJN, Exs. 11-25l Jones Decl., ¶¶ 6-8, 19-31.) Watermaster knows how to follow the Watermaster Approval Process, and yet consciously chose to completely bypass this process when it signed the 2019 Letter Agreement. (Jones Decl., ¶¶ 32-35.)[14]

The 2019 Letter Agreement both amended the performance criteria for the DYY Program (by making participation voluntarily and, as applied, allowing Opposing Party CVWD to take more production out of the DYY Program than allowed), and expanded who could participate in the DYY Program by allowing Opposing Party FWC to participate even without the required Local Agency

[14] Demonstrative exhibits are attached to the Declaration of Courtney Jones, depicting flow charts demonstrating the Watermaster Approval Process and the application of the Watermaster Approval Process to the adoption of the DYY Program and Amendment 8. Exhibits 1-3 to the Declaration shows, in contrast, the extreme shortcuts taken with respect to the 2019 Letter Agreement.

Agreement. Watermaster completely lacked the authority to take such actions and to bypass the formal Watermaster Approval Process. (RJN, Ex. 1 at ¶ 26.)

Amazingly, Watermaster has taken the position that the DYY Program, including its implementing Orders and Agreements, can be modified by the Parties to the Funding Agreement – Metropolitan, IEUA, TVMWD and Watermaster – independent from the formal Watermaster Approval Process even if that "agreement" results in material changes to the DYY Program. In a January 2022 Watermaster Board presentation, after Ontario raised the same concerns at issue herein, Watermaster doubled-down on the erroneous proposition that it could bypass the Watermaster Approval Process:

> The DYY program can be formally modified among the four signatories ([Metropolitan], IEUA, TVMWD, and [Watermaster].) Watermaster can consider and propose any modifications the parties can agree on to the Operating Committee.

(RJN, Ex. 43 at p. 17.) However, the Judgment and Orders are clear, as are the terms of the DYY Storage Agreement that specifically provides that "[a]ny modification of facilities that is materially different than those contemplated by the Local Agency Agreements will require the filing of a new application." (*Id*., Ex. 17 at Ex. A, § III.A.2.) Further, in considering the Funding Agreement now being relied upon by Watermaster, the Court specifically held that the DYY Program could ***not*** be implemented unless and until the parties complied with the formal Watermaster Approval Process. (*Id*., Ex. 12 at 3:18-25.) The 2003 Order also requires that any Local Storage Agreement must be "analyzed by Watermaster under the Material Physical Injury standard of the Peace Agreement and Rules and Regulations." (*Id*., Ex. 12 at 3:4-7.) None of this was done with respect to the 2019 Letter Agreement.

C. No Material Injury Analysis Was Performed Prior to the 2019 Letter Agreement

The maxim "first do no harm" is a principle firmly embedded within the governing documents for the Basin. The Peace Agreement defines Material Physical Injury, in part, as "material injury that is attributable to the Recharge, Transfer, storage and recovery, management, movement or Production of water, or implementation of the OBMP (Optimum Basin Management

Program) 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." (RJN, Ex. 30 at ¶ 1.1(y).) Specific to storage and recovery projects, like the DYY Program, Watermaster is prohibited from approving projects unless there is a finding that it will not result in a Material Physical Injury or that it can be mitigated:

> 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)(iii) Watermaster will ensure that any person, …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.

(*Id.*, Ex. 30 at ¶ 5.2(a)(iii).) That application, in turn, must contain sufficient information for there to be a meaningful, technical evaluation of whether there is a risk of Material Physical Injury. At a minimum, an application for the approval of an agreement to participate in a storage and recovery program must include information regarding the parties who will participate in the program, the ultimate place of use for the water, the quantity of water to be stored and recovered, the schedule for recovery, and the locations of the recharge and groundwater production facilities. (*Id.*, Ex. 2 at ¶ 10.7.) Implicit in these requirements is the recognition that the location of groundwater production facilities, the quantity of water that will be produced, and the schedule for groundwater production each are critical considerations when evaluating a proposed storage and recovery project, or modifications to that project, and potential impacts on the Basin.

As applied to the DYY Program, in its 2003 Order, the Court recognized the necessity of analysis under the Material Physical Injury standard of the Peace Agreement and Rules and Regulations. (RJN, Ex. 12 at 3:1-9.) Further, the eventual DYY Program Storage Agreement adopted by the Court specifically recognized the need for Material Physical Injury Analysis when there is a proposed modification to the DYY Program:

> Any modification of facilities that is *materially different* from those contemplated by the Local Agency Agreements will require the filing of a new application in accordance with the provisions of Article X, Section 10.7 of the (Watermaster) Rules and Regulations.

(*Id.*, Ex. 17 at § III.A.2. (emphasis added).) Here, the 2019 Letter Agreement was used to almost double, without any limitation, the amount of DYY Program water Opposing Party CVWD was permitted to produce as compared to its annual allotment in its Local Agency Agreement, and the 2019 Letter Agreement was used as basis to allow Opposing Party FWC to produce stored DYY Program water even though FWC does not even have a Local Agency Agreement. (Jones Decl., ¶ 25.) No application was filed, and, to Ontario's knowledge, no Material Physical Injury Analysis was performed nor were findings of no Material Physical Injury made. Further, no amendments were approved as to the Local Agency Agreements, and no Local Agency Agreement was approved for Opposing Party FWC. Such failures represent a complete abdication of Watermaster's duty to comply with the Judgment, Court Orders, and Watermaster Rules and Regulations.

D. Opposing Parties' Arguments Regarding Assessment of Stored Water Withdrawal Are Inconsistent With California Law

Opposing Parties FWC and CVWD argue that Watermaster's failure to assess stored water withdrawal is consistent with California law. (FWC and CVWD Opp. at p. 10.) The authorities cited, however, are inapposite and a red herring. Likewise, Opposing Parties FWC and CVWD's emphasis on distinguishing between native water from stored or imported water is inapplicable, as the governing documents for the Basin do not contain such distinctions regarding water produced from the Basin for purposes of assessing production. (RJN, Ex. 1 at 3:16-18.)

Opposing Parties FWC and CVWD primarily rely on two cases for their proposition that regular production assessments may not be imposed: *Los Angeles v. Glendale* (1943) 23 Cal.2d 68 ("*Glendale*"), and *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199 ("*San Fernando*"). Although both *Glendale* and *San Fernando* address rights related to importation and storage of groundwater, neither case supports the contention that stored water cannot be assessed. Rather, the portions of both *Glendale* and *San Fernando* cited to by FWC and CVWD provide that the importer of water into a basin for storage has a prior right to that stored water and to recapture the same. (*Glendale*,

supra, 23 Cal.2d at pp. 76-77; *San Fernando, supra*,14 Cal.3d at pp. 260-261.) Whether or not this is true, it is irrelevant as it does not relate at all to Watermaster's failure to assess the higher DYY Program production amounts claimed by Opposing Parties. In short, a right to pump groundwater does not equal a right to avoid lawfully imposed assessments on groundwater production.[15] As Ontario's Challenge relates to fees that should accompany removal of water rather than whether FWC and CVWD have a right to stored water, *Glendale* and *San Fernando* are distinguishable.

The governing documents for the Basin unambiguously provide that all water produced is assessed; they do not differentiate between native and stored water for purposes of assessments. (Jones Decl., ¶ 40.) For example, "Produce or Produced" is defined in the Restated Judgment as "[t]o pump or extract ground water from Chino Basin," and "Production" is defined as "[a]nnual quantity, stated in acre feet, of water produced." (RJN, Ex. 1 at ¶ 4(q), (s).) Similarly, the Judgment does not limit Watermaster's ability to assess production regardless of the basis. (Jones Decl., ¶ 41; see RJN, Ex. 1 at ¶ 51 ["Production assessments, on whatever bases, may be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool."].) Likewise, Watermaster is empowered to "levy assessments against the parties (other than minimal pumpers) based upon production during the preceding period of assessable production . . . ." (Jones Decl., ¶ 43; see RJN, Ex. 1 at ¶ 53.)

Other Basin governing documents also do not distinguish between native and stored water when assessing produced water. For example, the Appropriative Pool Pooling Plan states that "[c]osts of administration of [the Appropriative] pool and its share of general Watermaster expense shall be recovered by a uniform assessment applicable to ***all*** production during the preceding year." (Jones Decl., ¶ 42 (emphasis added); RJN, Ex. 1 at Ex. H at ¶ 6.) Furthermore, the Watermaster Rules and Regulations provide "Watermaster shall levy assessments against the parties . . . based upon Production during the preceding Production period." (Jones Decl., ¶ 44; RJN, Ex. 1 at art.

[15] As addressed herein, Opposing Parties CVWD did not have a right to produce more than its allotment, and Opposing Party FWC had no right to pump this water at all. The fact that FWC was permitted to remove 2,500 AF of water in the 2021/2022 year is a further example of Watermaster's exceedance of jurisdiction based on an informal letter agreement. (RJN, Ex. 1011 at ¶ 12 ["No use shall be made except pursuant to written agreement with Watermaster."].)

IV, § 4.1.) Finally, while Section 4.4 of the Watermaster's Rules and Regulations address assessment adjustments, neither production from a storage and recovery program nor the DYY Program are mentioned. (Jones Decl., ¶ 44.)

FWC and CVWD also wrongfully conflate pumping assessments with administrative fees. The administrative fees are paid to cover the administrative costs associated with DYY Program operation. In contrast, the pumping assessments cover the cost of operating the Basin as a whole. Accordingly, while Metropolitan pays administrative fees via service rates, this is separate and apart from pumping assessments that Watermaster is exempting for FWC's and CVWD's produced water. By waiving production assessments for the parties that voluntarily produce groundwater from the DYY Program account, Watermaster is creating differential impacts on producing parties and rendering it impossible to certify that production from the account is in lieu of imported water use. (Jones Decl., ¶ 62.) Ontario is not aware of any provision in the Judgment that permits exemption of production from the DYY Program storage account from pumping-based assessments. (*Id.* at ¶ 45.)

E. The Court Can and Should Consider All Information Submitted With the Application for Extension and Challenge and Raised in This Reply

In an apparent last-ditch effort to convince the Court to make its decision without fully considering all of the applicable law and facts involved, in its Opposition Watermaster argues that the scope of Ontario's Challenge should be limited to the face of its February 2022 Application and the Court should not consider arguments raised in a declaration and exhibit attached thereto. (Watermaster Opp. at 14:17-18.) This contention lacks support and is meant to constrain the Court's exercise of its authority to rule on the merits.

First, Watermaster and Opposing Parties' arguments that briefing should be limited because they would be prejudiced are particularly disingenuous since Watermaster and Opposing Parties were given the opportunity to agree to a full briefing schedule in lieu of the requested Application for Extension. (Ewens Decl., ¶ 6-7, Ex. 2.) Because Watermaster and Opposing Parties refused, there is no basis for them to contend they may be prejudiced by any arguments made in the Reply.

Second, at the hearing on April 8, 2022, Watermaster represented to the Court that it had

nothing further to add to its Opposition to the Application. At the same hearing, the Court granted Ontario's ex parte application to exceed page limit so that Ontario could fully brief the substantive matters at issue in this Challenge. (Ewens Decl., ¶ 6.)

Finally, the legal authority cited by Watermaster to argue that the Court's review of the record should be limited to the Application itself does not support this proposition. In its Opposition, Watermaster cites California Rule of Court 3.1112(d)(3), which provides that a motion must "[b]riefly state the basis for the motion and the relief sought." As Watermaster acknowledges, Ontario did that in its original Application and Challenge by stating that it needed an extension because it was searching for new water counsel, and also stating that it was challenging the propriety of Watermaster's actions including Watermaster's failure to administer assessments consistent with the Judgment and Court Orders. (See Watermaster Opp. at p. 15; Application for Extension at p. 1.) The other authority cited by Watermaster also does not require the Court to disregard Ontario's briefing and merely provides support that the declaration and supporting exhibits can be considered as evidence to support the Application. (See Code Civ. Proc., §§ 98, 2015.5, 1878; Cal. Rules of Court, rules 3.1112(b), 3.1115.) In sum, none of the cited authorities support Watermaster's efforts to limit the Court's review of Ontario's Challenge.

Watermaster next contends that the Court cannot consider arguments raised in the Reply that were not specifically raised in the February 2022 Application and Challenge. This contention is also without support, particularly given the fact that the arguments contained within this Reply respond directly to Watermaster's and Opposing Parties' opposition briefs and the over 300 pages of declarations and exhibits they submitted, that explicitly go into the substantive merits of Challenge. (See *Golden Door Props., LLC v. Superior Ct. of San Diego Cnty.* (2020) 53 Cal.App.5th 733, 774. As a result, Ontario's Reply, which addresses the issues raised in the opposition briefs, is proper for the Court's consideration.

Moreover, the Court has discretion to consider new issues in a reply. (See *Alliant Ins. Servs., Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1308.) It is not an abuse of discretion for the Court to consider new issues where the party opposing the motion has notice and an opportunity to respond to the new material. (See *Jacobs v. Coldwell Banker Residential Brokerage Co*. (2017) 14

Cal.App.5th 438, 449.) This is because the rule is based on the logic that points raised for the first time in a reply brief will deprive the respondent of an opportunity to counter the argument. (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1538.)

Watermaster is an arm of the Court whose purpose is to fairly enforce the provisions of the Judgment. (See RJN, Ex. 1 at ¶¶ 16-17.) Given Watermaster's role it is astounding that Watermaster would oppose full merits briefing so that the Court can make fully informed decisions. (*Id*., Ex. 29 at 3:9-18.)

F. Ontario's Challenge is Timely Both to the 2021/2022 Assessment Package and Watermaster's Application of the 2019 Letter Agreement

Opposing Parties and Watermaster mischaracterize Ontario's Challenge as a collateral challenge on the 2019 Letter Agreement that is barred by the statute of limitations. (Watermaster Opp. at p. 12; FWC and CVWD Opp. at pp. 8-9.) As explained in Ontario's Application, however, Ontario timely filed a challenge to the 2021/2022 Assessment Package within the 90-day period provided by the Judgment. (Application for Extension at p. 4.) That Ontario's Challenge also relates to Watermaster's application of, and implementation of, the 2019 Letter Agreement does not bar Ontario's claim.

Travis v. County of Santa Cruz (2004) 33 Cal.4th 757 ("*Travis*") is instructive to the case at bar. In *Travis*, the California Supreme Court held that the plaintiffs' claims, which challenged both the application of an ordinance and a facial challenge to the ordinance itself, were not barred by the statute of limitations because the plaintiffs raised a timely challenge following the county's application of the ordinance to them. (*Id.* at pp. 768-769.) The Court reasoned that the plaintiffs' challenge was not purely facial in nature, in which an injury arises solely from a law's enactment, but arose from the county's application of the ordinance against the plaintiffs' property. (*Id*. at p. 767.) The Court held that "[h]aving brought his action in a timely way after application of the Ordinance to him, Travis may raise in that action a facial attack on the Ordinance's validity." (*Id*. at p. 769, quoting *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 824 ("*Howard Jarvis*") ["[P]laintiff's attacks . . . 'are not barred merely because similar claims could have been made at earlier times to earlier violations.'"], citation omitted.) Any other holding would

be inequitable, as "a property owner … would be without remedy unless the owner had the foresight to challenge the ordinance when it was enacted, possibly years or even decades before it was used against the property." (*Travis*, *supra*, 33 Cal.4th at pp. 770-771.)

Similarly, here, Ontario's Challenge arises from the 2021/2022 Assessment and, specifically, the fee-shifting that resulted from Watermaster's exemption of 23,000 AF of water produced from the DYY Program from assessment. (Burton Decl., ¶ 4, Ex. 1; see also Christopher Quach's Declaration in Support of Ontario's Application ("Quach Decl."), ¶ 2.) Watermaster's purported authority for this exemption is the 2019 Letter Agreement, which fundamentally changed the recovery side of the DYY Program by permitting water to be recovered outside of the Local Agency Agreements without a corresponding shift of imported water. (Jones Decl., ¶ 9; RJN, Ex. 9.) The 2019 Letter Agreement, however, is silent on the issue of how assessments will be handled under the "voluntary" arrangement permitted by the Letter Agreement. (RJN, Ex. 41.) The 2019 Letter Agreement similarly does not allow for an increase in agencies' take capacity. (*Ibid.*) Watermaster, notwithstanding, permitted much higher takes in the 2021/2022 year: CVWD produced over 20,000 AF despite being permitted approximately 11,000 AF, and FWC produced over 2,000 AF despite the fact that it is not a party to a Local Agency Agreement. (*Id*., Ex. 60.) Thus, it is not the 2019 Letter Agreement in and of itself that gives rise to Ontario's Challenge but the application of the Agreement in the most recent assessment that forms the basis of Ontario's Challenge. Indeed, just as in *Travis*, Ontario is timely challenging both the recent application of the 2019 Letter Agreement via the 2021/2022 assessments and the Letter Agreement itself as the basis for these actions.

Ontario's Challenge to the 2021/2022 assessments also is akin to a challenge on an illegal tax that is continuing to be imposed. Challenges to illegal taxes are not time barred based on the timeframe directly following the enactment of the overarching ordinance's enactment but, rather, a new limitation period begins anew with each unlawful collection as collection is an ongoing violation. (*Howard Jarvis*, *supra*, 25 Cal.4th at p. 812.) In *Howard Jarvis*, the plaintiffs claimed that the city, by continuing to impose the tax at issue in the case, was failing to perform the legal duties required of it by Proposition 62. (*Id*. at pp. 819-820.) The California Supreme Court held

the city's allegedly illegal actions included not only the ordinance's initial enactment but also the continued collection of an unapproved tax. (*Id*. at p. 824.) As such, the plaintiffs' challenge was not time barred. (*Ibid*.) In so holding, the Court agreed with the plaintiffs who "acknowledge[d] the public policy favoring security of municipal finance, but observe[d] that the policy 'is not a trump card that somehow requires the courts to countenance *ultra vires* or illegal tax practices.'" (*Ibid.*, citation omitted.)

Ontario raises the same type of challenge as in *Howard Jarvis*: Watermaster is failing to perform the legal duties required of it by failing to administer assessments consistent with the Judgment. (Application for Extension at p. 4.) Watermaster is repeatedly creating improper fee-shifting with each assessment that follows the 2019 Letter Agreement. A new statute of limitations period was thus initiated with the 2021/2022 assessment rendering Ontario's Challenge on both the 2021/2022 assessment and the underlying 2019 Letter Agreement timely. As ruled by the Court in *Howard Jarvis*, Watermaster cannot evade judicial review of an improper tax ordinance, here the 2019 Letter Agreement, by arguing the statute of limitations bars Ontario's action.

The General Manager for Watermaster concedes in his declaration that "Watermaster has the ability to retroactively make changes to Assessment Packages if there is a subsequent agreement among parties or a subsequent Court Order that provide for a change in Watermaster's accounting of water transactions." (Peter Kavounas Declaration in Support of Watermaster's Opposition ("Kavounas Decl.") ¶ 9.) Ontario is seeking precisely this type of evaluation and order by the Court on the 2021/2022 assessment that, by Mr. Kavounas' own admission, may be done after the assessment is completed.

The Challenge to the 2019 Letter Agreement also is timely because the 90-day time period to challenge the approval of said agreement never accrued. Pursuant to Paragraph 31(a) of the Judgment, the "Effective Date" for any action or decision of Watermaster shall be deemed to have occurred on the date on which written notice thereof is mailed. The time for any motion to review said Watermaster action or decision shall be served and filed within 90 days of such action or decision. (RJN, Ex. 1 at ¶ 31(c).) Since there was never any formal notice of the approval of the 2019 Letter Agreement, the time to challenge that action never accrued. (See *Util. Audit Co. v.*

City of Los Angeles (2003) 112 Cal.App.4th 950, 962 ["A period of limitations ordinarily commences at the time when the obligation or liability arises."].)

G. Opposing Parties' Equitable Estoppel Argument Misrepresents the Facts and Fails as a Matter of Law

As IEUA notes, equitable estoppel applies when the following elements are satisfied: (1) the party to be estopped must be apprised of the facts; (2) the party to be estopped must intend his or her conduct shall be acted upon, or must so act such that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the other party must rely upon the conduct to his or her injury. (*Cotta v. City & County of San Francisco* (2007) 157 Cal.App.4th 1550, 1567 ("*Cotta*").) The burden of proof is on the party asserting estoppel. (See *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd*. (1985) 40 Cal.3d 5, 16.) There can be no estoppel where one of these elements is missing. (*Green v. Travelers Indem. Co.* (1986) 185 Cal.App.3d 544, 556.)

Here, IEUA contends that Ontario should be estopped from challenging the Watermaster Action because Ontario allegedly supported the 2019 Letter Agreement. (See IEUA Opp. at 6.) Such claims are demonstrably false.

Ontario was not apprised of the material facts in 2018-2019 as IEUA contends both because Ontario's Challenge arises from the 2021/2022 assessment and because the 2019 Letter Agreement was not executed through the Watermaster Approval Process. Ontario's Challenge arises from the 2021/2022 assessment and, particularly, the fee-shifting that resulted from Watermaster's exemption of 23,000 AF of water produced from the DYY Program. (Burton Decl., ¶ 4; see also Quach Decl., ¶ 2.) Because this assessment occurred in 2021, Ontario was not (and could not have been) apprised of these facts in 2018-2019, especially since the Letter Agreement was silent as to how assessments would be handled under the "voluntary" arrangement under the Letter Agreement.[16] (RJN, Ex. 41.) Moreover, the 2019 Letter Agreement does not allow for an increase

[16] Notably, even today, Opposing Parties expressly recognize the difficulty in understanding the actual financial impacts of the 2019 Letter Agreement. As noted by FWC, costs and assessment impacts are not easily calculated and "costs are not precisely known, because the Chino Basin

in agencies' take capacity. (*Ibid*.) Moreover, Watermaster actively misrepresented the impacts when the General Manager advised the Pool Committees that the Letter Agreement "changes don't commit Watermaster to anything." (Jones Decl., Ex. 4 at 3:5-12.) Under these circumstances, Ontario was not fully apprised of the full effects of the 2019 Letter Agreement, nor could it have been.

Second, an essential element of equitable estoppel is that the party to be estopped intended by its conduct to induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance was intended. (See *Cotta, supra*, 157 Cal.App.4th at p. 1567. Moreover, silence and inaction may support estoppel only if the party to be estopped had a duty to speak or act under the particular circumstances. (*Feduniak v. Cal. Coastal Comm'n* (2007) 148 Cal.App.4th 1346, 1362.) Here, IEUA seeks to estop Ontario from arguing the merits of its Challenge based on Ontario's alleged silence. This argument is factually wrong. Ontario was not silent, stating in correspondence to IEUA: "*Ontario cannot take a position of support because [Ontario] cannot know the full effects of the proposed changes* … we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise." (Jones Decl., Ex. 7 (emphasis added).)

Third, IEUA fails to show that Watermaster or any other party detrimentally relied on Ontario. IEUA does not even contend that it or Watermaster relied on Ontario's conduct in executing the 2019 Letter Agreement. (See IEUA Opp. at pp. 6-7.) Accordingly, IEUA fails to establish reliance on Ontario's conduct, or any injury.[17]

Finally, IEUA fails to establish that this is an exceptional case allowing estoppel to be applied against a government entity. (See *Alameda Cnty. Deputy Sheriff's Ass'n v. Alameda Cnty. Emps.' Ret. Ass'n* (2020) 9 Cal.5th 1032, 1072, citation omitted.) Estoppel will not apply against a government entity except in unusual instances to avoid grave injustice and when the result will

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Watermaster would have to calculate a new assessment package, which is an intricate process and dependent on may factors, including actions of other parties." (Declaration of Josh Shift, ¶ 4.)

[17] Because Opposing Parties have been unjustly enriched from an unlawful cost-shifting of assessments, their claim that taking that away and restoring the status quo will somehow constitute an "injury" to them is absolutely beyond reason.

not defeat a strong public policy. (*Ibid.*) IEUA has made no such showing, nor could it.

Equitable estoppel also is a remedial judicial doctrine employed to ensure fairness, prevent injustice, and do equity. (*Leasequip, Inc. v. Dapeer* (2002) 103 Cal.App.4th 394, 403.) Here, the equities favor Ontario. IEUA seeks to deny Ontario an opportunity to substantively challenge the Watermaster action. The Judgment provides that Watermaster serves as an arm of the Court and its function is to administer and enforce the provisions of the Judgment and any subsequent instructions or orders of the Court. (RJN, Ex. 1 at ¶¶ 16-17.) As a result, challenges to Watermaster actions should be heard on their merits.

V. LEGAL ANALYSIS PERTAINING TO APPLICATION FOR EXTENSION

A. Precedent Exists for Granting Extension Requests

The Judgment charges Watermaster with administering and enforcing the provisions of the Judgment and any subsequent instructions or orders of the Court. (RJN, Ex. 1 at ¶¶ 15, 17.) However, the Court retains ultimate jurisdiction over all matters and the Judgment gives any party the right to file a motion with the Court to challenge Watermaster's action within 90 days of that decision. (*Id.* at ¶¶ 15, 31(c).)

Given the complexity of the legal and technical issues inherent in this Basin, the Judgment also authorizes the Court to grant extensions of time to challenge Watermaster actions. Indeed, parties to the Judgment and Watermaster have, at various times, requested extensions of time under Paragraph 31(c) of the Judgment that were granted by the Court. By way of example, Chino filed an ex parte application on October 15, 2020 seeking additional time to file its motion. The Court granted Chino's application and extended the time for Chino to file its motion by two months. (RJN, Ex. 26.) Watermaster likewise made similar requests for extensions of time to file a substantive response to a motion by the Appropriative Pool member agencies. (*Id*., Ex. 27.) On or about October 20, 2020, Watermaster filed an ex parte application to continue a hearing on the motion so that it could file an opposition brief based on new arguments presented in the Appropriative Pool member agencies' reply brief. Again, the Court granted this request and continued the hearing to allow for substantive briefing on the issues. (*Id*., Ex. 28.)

B. Good Cause Exists to Grant Request for Extension

1. Ontario Relied on Good Faith Settlement Negotiations With Watermaster and Opposing Parties and Good Cause Exists to Grant the Extension

Watermaster ignores certain critical facts supporting Ontario's reasonable extension request and baldly asserts, incorrectly, that Ontario had adequate time to prepare a challenge and has "shown no reason to extend the deadline to challenge Watermaster's approval of the 2021/22 Assessment Package to allow it to 'further develop' its challenge." (Watermaster Opp. at 10:27-11:2.) This contention is inaccurate and conceals from the Court that: (a) the parties were negotiating in good faith through early February 2022 on the disputed issues; (b) Watermaster provided assurances to Ontario that an extension would likely be given and then waited until February 11, 2022 – six days before the challenge deadline – to notify Ontario that its extension request was denied; (c) also on February 11, Opposing Party FWC notified Ontario that it would not waive conflicts so that Ontario's then-water counsel could file an application to challenge the Watermaster Action by February 17; (d) upon receipt of this information and in less than a week, Ontario timely filed the Application so that it could retain water law counsel to represent it with respect to the challenged Watermaster Action; and (e) when Ontario's new counsel substituted into the case, Watermaster again refused the professional courtesy of an extension request for a full briefing schedule on the Watermaster Action. (See San Bernardino County Bar Association Civility Code, Duties to Other Counsel, ¶ 7 [noting duties to "extend courtesy to other counsel in scheduling dates for depositions, hearings, and trials as well as granting reasonable requests for extensions of time and continuances"].) Watermaster also refused to agree to a full briefing schedule even after the Court continued the hearing to June 17, 2022. Watermaster's refusal to agree to a briefing schedule is a continuation of its tactical efforts to limit Ontario's ability to brief its Challenge. These facts provide good cause to support the Application and extension request.

Due process requires that a party be given notice and an opportunity to defend its interests. (*Antelope Valley Groundwater Cases* (2021) 62 Cal.App.5th 992, 1057-1060.) The primary purpose of procedural due process is to provide affected parties with the right to be heard at a meaningful time and in a meaningful manner. (*Ibid.*) Consequently, due process is a flexible concept, as the

characteristic of elasticity is required in order to tailor the process to the particular need. (*Ibid.*) Under the circumstances that exist here, due process should be applied to allow Ontario a full and meaningful opportunity to brief its challenge.

2. Watermaster Should be Estopped from Denying an Extension

Subject to a showing of the essential elements, equitable estoppel is applicable when the conduct of one side has induced the other to take such a position that it would be injured if the first should be permitted to repudiate its acts. (*L.A. Unified Sch. Dist. v. Torres Constr. Corp.* (2020) 57 Cal.App.5th 480, 505, fn. 10.) Here, Watermaster should be estopped from denying an extension to Ontario to fully brief the issues. Watermaster was apprised of all relevant facts. It knew that Ontario, Watermaster, and other interested parties were negotiating a resolution through early February 2022, and it knew that Ontario would require an extension if the parties could not come to an agreement.

Ontario also reasonably believed that Watermaster intended that its conduct be relied upon. Specifically, following the November 18, 2021 meeting in which the Watermaster Board sought input from interested parties, Ontario raised the issue of whether a tolling agreement or extension request would be beneficial. On December 6, Watermaster's counsel responded that Watermaster hoped to see resolution of Ontario's concerns and that a complete report on the concerns would be provided at the January 27, 2022 Board meeting, and based on this, no extension "is required at this time because it appears we have ample time to address" the issues, and an extension could be revisited at the January 27 Board meeting. Ontario relied on these representations, continued to negotiate in good faith, and, on January 24, sent a letter to Watermaster stating that it was awaiting the legal report from Watermaster's staff concerning the Watermaster Action and further documenting Ontario's concerns with the Watermaster Action. On January 27, 2022, Watermaster presented a staff report to the Watermaster Board in response to Ontario's concerns. (RJN, Ex. 42.) But despite representations by the Watermaster Board that a legal evaluation would be completed to address whether the Watermaster Action complied with the Judgment and other Court Orders, Watermaster's counsel responded at the Board meeting that it was "not prepared to provide a legal opinion in this moment." (Burton Decl., ¶ 10.) It was understood by Ontario that to comply with

the Watermaster Board's direction, a report from Watermaster counsel still would be forthcoming. (*Ibid.*) Ontario reasonably relied on Watermaster's above conduct that Ontario's extension request would be granted to accommodate the ongoing work and discussions.

3. Watermaster Will Suffer No Prejudice by an Extension

As a neutral arm of the Court, Watermaster should welcome the opportunity to have the Court consider full briefing on the issue of whether the 2021/2022 Assessment Package and 2019 Letter Agreement comply with the Judgment and Court Orders. Yet Watermaster has sought to obtain an improper procedural advantage by opposing Ontario's Application. Watermaster's efforts to prevent a full review of the Watermaster Action are also evident from its Opposition where it argues that this Court should not consider the correspondence that is attached as an exhibit to a declaration in support of Ontario's Application and Challenge that identifies the legal defects with the Watermaster Action. Such attempts to exclude argument and evidence also are without factual and legal support and further demonstrate the need for the Court to review the Watermaster Action based on a fully briefed and developed record.

VI. CONCLUSION

Ontario respectfully requests that the Court grant its Challenge and issue an order: (1) invalidating the 2019 Letter Agreement; (2) directing Watermaster to comply with the Watermaster Approval Process; (3) directing Watermaster to implement the DYY Program in a manner consistent with the Judgment and Court Orders; and (4) correcting and amending the 2021/2022 Assessment Package to assess water produced from the DYY Program. Alternatively, Ontario requests that the Court grant its Application for Extension to allow full merits briefing.

Dated: May 26, 2022

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By: _____

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EXEMPT FROM FILING FEES UNDER GOVERNMENT CODE § 6103

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.,

Defendants.

Case No.: RCVRS 51010

Assigned to the Honorable Stanford E. Reichert

FONTANA WATER COMPANY'S AND CUCAMONGA VALLEY WATER DISTRICT'S OPPOSITION TO CITY OF ONTARIO'S APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGMENT, PARAGRAPH 31(c) TO CHALLENGE WATERMASTER ACTION/ DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE

Date: April 8, 2022
Time: 1:30 p.m.
Place: Dept S35

Filed currently herewith:

- Memorandum of Points & Authorities in Opposition
- Declaration of Josh Swift;
- Declaration of Eduardo Espinoza
- [Proposed] Order.

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Fontana Water Company (FWC) and Cucamonga Valley Water District (CVWD), each of which is a defendant under the Chino Basin Judgment and a member of the Appropriative Pool, oppose both: (1) the City of Ontario's ("Ontario") application for an order to extend time to challenge the Watermaster's Fiscal Year 2021/2022 Assessment Package; and (2) the merits of Ontario's challenge to the Assessment Package.

SUMMARY OF ARGUMENT

FWC and CVWD are among the primary targets of the Ontario filing. Court approval of Ontario's application on the merits would cost FWC and CVWD millions of dollars in back-charged assessments based upon their legitimate past decisions to pump water under the Dry Year Yield Program (DYYP), cause significant financial and other impacts to virtually all appropriators in past, current and future years, and create a chilling effect on participation in the DYYP by FWC and CVWD, if not all appropriators, going forward. FWC and CVWD ask this Court resolve the merits expeditiously.

An extension of time is both unwarranted and harmful to FWC and CVWD and their ongoing operations. Ontario first raised its concerns about the Assessment Package in writing no later than November 1, 2021. Accordingly, Ontario had at least three and one-half months to prepare a full motion to challenge the package. However, Ontario chose not to prepare a motion, but instead filed its last-minute application for an extension of the deadline.

FWC and CVWD dispute Ontario's characterization that settlement negotiations among the parties directly involved in this matter are ongoing and warrant an extension of time. While Agency and Ontario representatives did meet twice in January 2022 regarding DYYP issues, no further settlement meetings have occurred since that time. Based upon a unilateral term sheet shared by Ontario during a January 24, 2022 meeting, FWC and CVWD do not believe settlement is possible. Moreover, there will be continued prejudice to FWC and CVWD if the matter is not decided promptly by this Court because the outcome of the application *will* impact past and future assessment amounts in the millions of dollars payable by FWC and CVWD and *will* affect ongoing operational decisions each Agency is taking in FY 21/22. Indeed, FWC and CVWD would each immediately cease all involvement in the DYYP if the merits of Ontario's application are upheld.

///

The substance of the application also lacks merit. Ontario's admitted primary concern with the DYYP is with the process followed by the Chino Basin Watermaster in approving a 2019 Letter Agreement among the Watermaster, Inland Empire Utilities Agency (IEUA), Metropolitan Water District of Southern California (MWD), and Three Valleys Municipal Water District ("Three Valleys") addressing changes to aspects of the program. However, Ontario failed to timely challenge that 2019 approval within 90 days, as required by Paragraph 31(c) of the Judgment. As a result, Watermaster's approval of the 2019 Agreement was and remains legally valid. Ontario is now precluded by the terms of the Judgment and laches from trying to bring a late-arriving challenge to that agreement via the instant application.

Furthermore, FWC and CVWD have justifiably relied upon the Watermaster's approval of the 2019 Letter Agreement in conducting their respective operations since the beginning of Production Year ("PY") 19/20. Each agency would have purchased available imported surface water in lieu of producing water stored in MWD's Chino Basin storage account under the DYYP had the 2019 Agreement not been approved. Any Ontario assertion to the contrary would be both false and inadmissible for lack of knowledge of the intent of FWC and CVWD.

Ontario's application also entirely disregards the legal character of the imported water stored in MWD's account. Under long-standing California law, when an entity stores imported water in available storage space in a groundwater basin, the importer or its designee has the right to recapture the imported water without diminishment from the basin. (*Los Angeles v. Glendale* (1943) 23 Cal.2d 68, 76-77; *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 260, 261, 264.) In keeping with this black letter law, the Judgment provides for Watermaster administration of Storage Accounts for imported water and explicitly recognizes in its definition of Safe Yield and other provisions that imported and native water are to be accounted for and treated separately.

Consistent with this separate treatment of native and stored imported water, over the more than ten years that DYYP water has been made available, withdrawals of Stored Water from the MWD Storage Account by local "Operating Parties" have *never* been subject to regular Watermaster assessments. Instead, the administrative and other costs to Watermaster associated with the administration of DYYP water are offset by way of the express payment obligations described in the

DYYP agreements, not through production assessments. And, Ontario has previously approved of this methodology for DYYP pumped water by approving prior year assessment packages. FWC and CVWD have paid, and continue to pay, in full their financial obligations to MWD and the Watermaster under the DYYP agreements for withdrawal of water from the MWD storage account. And, FWC and CVWD cannot be compelled to pay both DYYP obligations and Watermaster assessment charges for pumping the same water.

For all these reasons, as well as those discussed below and in the Watermaster's opposition brief, Ontario's application should be denied.

STATEMENT OF FACTS

The following is a summary of the significant facts leading up to Ontario's application. A more detailed statement of these facts is set forth in the Watermaster opposition and supported by the accompanying declarations.

Under the Dry Year Yield Program, MWD stores imported water in the Chino Basin, which is later withdrawn by Operating Parties, which are participating member agencies of the two wholesale agencies, IEUA and Three Valleys. The original purpose of the DYYP was to allow MWD, in times of emergency or drought, to require the Operating Parties to purchase and use imported water withdrawn from storage instead of purchasing imported surface water from MWD directly. (Declaration of Eduardo Espinoza, filed concurrently ("Espinoza Decl."), ¶¶ 4-5.)

In 2017, in response to heavy rainfall in the region, MWD requested to store more imported water in the Basin than permitted under the existing DYYP agreements. The Watermaster and parties agreed, but the Operating Parties expressed concern over their ability to withdraw this extra water when called to do so. At the same time, MWD expressed concern over the fate of any stored imported water that was still in the Basin when the DYYP expired in 2028. (*Id.* at ¶ 5.)

In 2018, discussions began over an early withdrawal provision to partly resolve these concerns. In Pool meetings and in the Watermaster Board meeting in September 2018, the Watermaster General Manager informed the Judgment parties that the Watermaster intended to sign a letter agreement allowing the Operating Parties to purchase and withdraw imported water from storage at any time, rather than just in response to a call by MWD. Neither Ontario nor any other Judgment party expressed any

opposition to the substance of the agreement, nor to the procedure of using a letter agreement to document it. No party expressed any concerns over the authority of the Watermaster General Manager to sign the letter agreement. No party called for formal approval of the agreement by the Watermaster Board of Directors. (*Id.* at ¶ 6.)

In 2019, the letter agreement was signed. (*Id.* at ¶ 6, Exh. B, (letter agreement, dated February 5, 2019).) The letter documents the effort of the parties to maximize storage during the wet period, and the new procedure for voluntary withdrawals of imported water from storage by the Operating Parties. It left unchanged the provisions for required withdrawals in response to a call from MWD. No party objected to or challenged the implementation of the letter agreement terms in FY 20/21.

After the letter agreement was signed, IEUA offered its member agencies, including Ontario, the opportunity to purchase and withdraw imported water from storage on a voluntary basis. Ontario did not avail itself of this opportunity, but FWC and CVWD did. Each of these agencies has purchased and withdrawn imported water from storage in the 19/20 and 20/21 production years, and are still doing so. (Declaration of Josh Swift ("Swift Decl."), ¶ 2; Espinoza Decl., ¶ 7.) By long Watermaster practice, as explained further below, Watermaster has never imposed assessments on withdrawal of imported water from storage. (Espinoza Decl., ¶ 10.) Accordingly, the FY 21/22 assessment package approved by the Watermaster parties in November 2021 does not contain any such assessments. It is this assessment package that Ontario challenges in the instant application.

ARGUMENT

I. Ontario's Request for an Extension of Time Should be Denied

Ontario's application for an extension of time to file a motion should be denied. Ontario raised written concerns about the draft FY 21/22 Assessment Package in a comment letter to the Watermaster dated November 1, 2021, which was more than three and half months before the due date for its motion. (See Declaration of Christopher Quach accompanying Ontario Application ("Quach Decl."), Exh. A.) Ontario also submitted a second comment letter to Watermaster dated January 24, 2022 providing more detail about its concerns. (Quach Decl., Exh. B.) Ontario could have used these letters as a basis to prepare a proper motion during the 90 days following the Watermaster's approval of the FY 21/22

Assessment Package on November 18, 2021. Accordingly, Ontario had ample time to prepare a "fully developed motion" to challenge the Assessment Package by mid-February 2022, but failed to do so.

Ontario asks that its filing deadline be extended in order to allow for settlement negotiations to continue. FWC and CVWD dispute Ontario's characterization (Application, 4:15) that settlement negotiations among FWC, CVWD and Ontario are ongoing. (Swift Decl., ¶ 8; Espinoza Decl., ¶ 14.) While FWC and CVWD did meet with Ontario representatives twice in January 2022 regarding DYYP issues, no further three-party settlement meetings have occurred since that time. (Swift Decl., ¶ 8; Espinoza Decl., ¶ 14.) Based upon a unilateral term sheet shared by Ontario during the January 24, 2022 meeting, FWC and CVWD do not believe settlement is possible, particularly insofar as Ontario's proposal seeks assurances and representations regarding DYYP administration from parties other than FWC and CVWD. (Swift Decl., ¶ 8; Espinoza Decl., ¶ 14.)

Moreover, there will be continued prejudice to FWC and CVWD if the DYYP matter is not resolved promptly by this Court because the outcome of the application will impact past and future assessment amounts payable by each of the agencies, and ongoing operational decisions they each make in PY 21/22. (Swift Decl., ¶¶ 4-5; Espinoza Decl., ¶ 13.) If, for example, the Court determines that pumping under the DYYP is assessable as regular production, FWC and CVWD would each eliminate DYYP pumping going forward and likely stop all participation in the DYYP until program uncertainty is resolved. (Swift Decl., ¶ 6; Espinoza Decl., ¶ 12.) Delays in a Court ruling will thus have significant impacts on Agency operational and financial decisions for the remainder of PY 21/22 and going forward. These impacts are in addition to impacts that would occur were the Court to grant Ontario's application on the merits, as discussed below. A decision on the merits of the issues should be promptly issued.

II. Ontario's Challenge to the 2019 Letter Agreement Should be Rejected as Untimely

Ontario's application, while stated as a challenge to the FY 21/22 Watermaster Assessment Package, is in reality a challenge to the 2019 Letter Agreement that amended the DYYP, on which the Assessment Package is based. Because Ontario did not timely contest the Watermaster's approval of that amendment in 2019 within the 90-day period set forth in Judgment, Paragraph 31(c), it cannot do so now retrospectively by way of a challenge to the Assessment Package.

Ontario has repeatedly acknowledged that its concerns about the FY 21/22 Watermaster Assessment Package arise primarily, if not exclusively, from the Watermaster approval of the 2019 Letter Agreement. (Ontario stated: "Ontario's concerns remain foundationally in the execution of the 2019 Letter Agreement, how it fundamentally changed the recovery aspect of the DYYP, how it is not consistent with the 2004 Court-approved agreements, and that it did not go through the formal Watermaster approval process similar to other material DYYP amendments.") Quach Decl., Exh. B, (January 24, 2022 letter from Courtney Jones, Ontario, to Peter Kavounas, Chino Basin Watermaster, p. 2).)

Even though the Watermaster and its staff undertook an extensive process before the General Manager executed the 2019 Letter Agreement, Ontario did not timely challenge that approval. (Espinoza Decl., ¶ 6; Judgment, ¶ 31(c).) Therefore, the limitations period has run and Ontario's claims are also barred by laches. (*Pacific Hills Homeowners Ass'n v. Prun* (2008) 160 Cal.App.4th 1557, 1564-1565 [defense of laches requires unreasonable delay by plaintiff, plus either acquiescence by plaintiff in the act complained of or prejudice to defendant caused by the lapse of time].)

Accordingly, the 2019 Letter Agreement and the DYYP remain valid. Under basic agency concepts, FWC and CVWD were entitled to rely, and did rely in good faith, upon the Watermaster General Manager's action in entering into the Letter Agreement. Under the Civil Code, agents have the authority to do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of their agency. (Civ. Code, § 2319.) The agent has this authority unless specially deprived of it by the principal, and even then has the authority ostensibly, except as to persons who have actual or constructive notice of the restriction on the agent's authority. (Civ. Code, § 2318.) Here, the Watermaster Board took no action to limit the authority of the General Manager to enter into the Letter Agreement in the ordinary course of business. Also, an instrument within the scope of an agent's authority by which an agent intends to bind the principal, does so if, as here, the intent is plainly inferable from the instrument itself. (Civ. Code, § 2337.)

Finally, if a person has incurred liability or parted with value on good faith belief of actual or ostensible authority, the principal is bound by the agency's acts. (Civ. Code, § 2334.) Here, FWC and CVWD parted with money in purchasing and withdrawing imported water from storage under the

DYYP, in the good faith belief that the letter agreement is valid. Therefore, the Watermaster is bound by the letter agreement as if the Board formally authorized it. And, because the 2019 Letter Agreement is binding on DYYP participants, any assessments based on the terms of that agreement are also valid.

III. The Watermaster Correctly Excluded DYY Pumping from the FY 21/22 Assessment Package Calculations

The Application's assertion that the Watermaster improperly excluded removal of Stored Water from regular production assessments is without merit. California law, the language of the Judgment and the DYYP agreements, and the unchallenged course of conduct of the Watermaster since the beginning of the DYYP all support treating the take of stored, imported water as non-assessable.

A. Watermaster's Refusal to Assess Stored Water Withdrawal is Consistent with California Law

Under California law, groundwater storage space is a public resource. (*Los Angeles v. Glendale* (1943) 23 Cal.2d 68, 76-77; accord *Central and West Basin Water Replenishment District* (2003) 109 Cal.App.4th 891, 896.) An entity that imports water into a basin has the right to subsurface storage of that imported water, as well as the right to recapture the imported water without diminishment. (*Glendale*, 23 Cal.2d at 76-77; *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 260, 261, 264 ["[O]nly deliveries derived from imported water add to the ground supply"; the importer is to be credited with "the fruits of his expenditures and endeavors in bringing into the basin water that would not otherwise be there."].)

Consistent with the above-described black letter law, the Chino Basin Judgment expressly allows parties and non-parties to utilize available groundwater storage capacity and to withdraw Stored Water, subject to written agreement with the Watermaster. (Judgment, ¶ 12.) And, as described below, costs to the Watermaster associated with administration of the DYYP and take of Stored Water are paid by MWD and the local Operating Party under the terms of the DYYP agreements. As a result, there is no need, nor would it be proper in this instance, for the Watermaster to impose regular production assessments on the removal of Stored Water.

B. The Judgment Treats Native and Stored Water Differently

The Judgment carefully distinguishes between the native groundwater supply of the Chino Basin, on one hand, and stored imported water, on the other. Stored Water is defined as "Supplemental Water held in storage, as a result of direct spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to agreement with Watermaster." (Judgment, ¶ 4(aa).) In turn, Supplemental Water "[i]ncludes both water imported to Chino Basin from outside Chino Basin Watershed, and reclaimed water". (Judgment, ¶ 4(bb).) In contrast, the Judgment terms "Basin Water"[1] and "Safe Yield"[2] focus on native water and expressly exclude Stored Water.

In a similar vein, the Judgment is also careful to distinguish between the *production* of native Chino Basin groundwater and the *withdrawal* (aka "take") of Stored Water. (Compare Judgment, ¶ 13 entitled "Injunction Against Unauthorized Production of Basin Water" with ¶ 14 entitled "Injunction Against Unauthorized Storage or Withdrawal of Stored Water").

C. Production of Native Groundwater is Subject to Production Assessments, but Withdrawal of Stored Water is Subject to the Payments Required by the DYYP Agreements

1. Production Assessments Apply to Native Groundwater

The Judgment directs the Watermaster to assess *production* based upon the pooling plans. (See Judgment, ¶ ¶ 51, 53].) The Appropriative Pool Pooling Plan establishes two different kinds of native water production assessments: administrative assessments and replenishment assessments. (Judgment, Exh. H, ¶¶ 6 and 7; see also Watermaster Rule 4.1.) Administrative assessments cover general Watermaster administrative expenses such as office, rental, personnel, supplies, office equipment and general overhead, as well as special project expenses. (Watermaster Rule 4.1(a).) The replenishment

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[1] "Basin Water –- Ground water 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 herein. Said term does not include Stored Water." (Judgment, ¶ 4(d) - emphasis added.)

[2] "Safe Yield –- 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." (Judgment, ¶ 4(x) - emphasis added.)

obligation portion of the regular production assessment covers both overproduction by Appropriative Pool parties and their desalter replenishment obligation (DRO). (Watermaster Rule 4.7; Judgment, ¶ 45.)

2. Watermaster Cost Recovery for the DYYP Program is Established in the DYYP Agreements

In contrast to the above procedures applicable to pumping of Chino Basin native groundwater, administrative and other costs to the Watermaster associated with the DYYP are recovered by way of the payment terms in the 2003 DYYP Agreement among MWD, Watermaster, Three Valleys and IEUA.[3]

Under the DYYP Agreement, since 2004 MWD has paid an "administrative fee" of $132,000 (plus an annual inflation adjustment) per year to the Watermaster, which has increased to over $170,000 annually by 2021, "to cover the incremental costs and expenses of administering the Program during such year." (Espinoza Decl, Exh. A, 2003 DYYP Agreement, ¶ VI(D)(3).) In other words, MWD already pays for the administrative costs to the Watermaster of operating the DYYP, akin to the administrative assessments on groundwater production that AP members pay to produce native water. To impose further administrative charges via a production assessment on Chino Basin Operating Parties that withdraw MWD water from its Storage Account—an argument Ontario advances—would constitute a double administration charge on pumping of such water. And, the Judgment does not contemplate the imposition of replenishment assessments on withdrawals of Stored Water, which are not part of the Basin's Safe Yield. (See Judgment, ¶¶ 4(xx) and 45.)

The Ontario application mistakenly implies that withdrawal of Stored Water is conducted free of charge. (Quach Decl., Exh. B, p. 3.) To the contrary, the 2003 DYYP Agreement requires that the "then applicable [MWD] full-service rate" be paid for each acre foot of water called for and withdrawn from the MWD Storage Account by Operating Parties. In addition, DYYP water is factored into fixed MWD

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[3] Without citation, Ontario asserts that "the Judgment requires virtually all production to be assessed in order to pay for Watermaster activities." (Quach Decl., Exh. B, p. 3.) As explained above, under the Judgment regular Watermaster assessments are imposed on the *production* of native water. The *withdrawal* or recovery of Stored Water is treated separately. Indeed, even the Ontario filing admits (albeit using incorrect Judgment terms) that "Watermaster has historically waived assessments . . . on water produced under the DYYP without objection." (*Id.*, p. 3.)

readiness to serve (RTS) fees paid by FWC and CVWD. (Espinoza Decl., ¶ 9, Exh. A (2003 DYYP Agreement, ¶ VIII(D).)) Together, this means that, in PY 21/22, entities like FWC and CVWD pay more than $799 per acre foot, plus a portion of RTS fees less an operational credit, to withdraw MWD Stored Water. (Espinoza Decl. ¶ 11) FWC and CVWD have always paid in full these MWD service rates amounts when withdrawing MWD Stored Water. (Swift Decl., ¶ 3; Espinoza Decl. ¶ 9). Any requirement for FWC and CVWD to pay the MWD full service rate, an RTS charge, and a Watermaster assessment for withdrawal of stored water would constitute an improper double charge.

D. The Watermaster's Proper, Unchallenged Course of Conduct Has Been to Exclude DYY Pumping from Production Assessments

Based upon the above, the Watermaster has *always* and correctly treated take of Stored Water from the MWD accounts by Operating Parties under the DYYP as non-assessable. Since inception of the DYYP in 2003, withdrawals of MWD stored imported water through pumping by local Operating Parties in the Chino Basin in lieu of purchasing imported surface water has never been subject to Watermaster assessments under the court-approved DYYP Agreements. ("The water that was taken from MWD's account by [FWC and CVWD] is considered a take from a Storage and Recovery account and as such, consistent with *ten* prior Assessment Packages, it is not subject to Watermaster assessments or DRO obligation.") Espinoza Decl. ¶ 10, Exh. C, Watermaster Staff Report, 1/27/22, p. 5).) Until recently, neither Ontario nor any other Chino Basin pumper has *ever* challenged that course of conduct by the Watermaster. (*Id.* ¶ 10.) To the contrary, in the first cycle of the DYYP, Ontario regularly conducted puts and takes of Stored Water under the DYYP without paying assessments on those volumes it pumped from the Basin.) Ontario has also voted in favor of assessment packages as recently as FY 20/21 under which DYYP withdrawals were not assessed. (*Id.* ¶ 10.) Ontario has unclean hands with respect to this issue and has waived its right to challenge the assessment fee structure with respect to recovering Stored Water under the DYYP. See *Mendoza v. Ruesga* (2008) 169 Cal. App. 4th 270, 278-279.

IV. FWC and CVWD Will Be Substantially Harmed If Assessed On Their Withdrawal Of Imported Water From Storage

FWC and CVWD will be significantly financially and operationally harmed if their past or ongoing withdrawals of Stored Water under the DYYP are made subject to production assessments. If the FY 21/22 Assessment Package were redone to unwind CVWD's participation in the DYYP, the total financial impact to CVWD would range from approximately $2.3 million to $8.5 million, depending on the prescribed remedy. (Espinoza Decl. ¶ 11.) FWC's cost would increase over $885,000. (Swift Decl. ¶ 4.) In addition, FWC and CVWD have already paid and continue to pay more than $762 per acre foot, less an operational credit, to MWD to withdraw this DYYP water. (Espinoza Decl. ¶ 9.) This amounts to millions of dollars paid by FWC and CVWD to MWD each fiscal year. If FWC and CVWD were compelled to also pay Watermaster assessments on DYYP water, they would incur significant undue harm. (Swift Decl., ¶ 4; Espinoza Decl. ¶ 11.) And, these extra charges would render the cost of producing each acre foot of water under the DYYP far more expensive that simply purchasing imported surface water from MWD or other available sources. (Espinoza Decl., ¶ 12.) As a result, there would be no financial reason for FWC and CVWD, or any other appropriator, to participate in the DYYP. Such an outcome would have a chilling effect on the entire program. (Swift Decl., ¶ 5; Espinoza Decl. ¶ 12.)

V. Even if the Court Considers the Substance of Ontario's Challenge to the 2019 Letter Agreement, those Arguments Should be Rejected

Ontario's fundamental substantive assertion appears to be that Watermaster's approval of the 2019 Letter Agreement constituted an unauthorized change to the DYYP that "is inconsistent with the storage agreement approved by Watermaster and ordered by this Court" and that "it did not go through the formal Watermaster approval process similar to DYYP Amendments." (Quach Decl., Exh. B, pp. 1-2.)

Although its arguments are difficult to discern because they are not made in the proper format in the legally required memorandum of points and authorities (see California Rule of Court 3.1113(a)), Ontario's convoluted reasoning seems to be that: (1) the Watermaster did not lawfully approve the 2019 Letter Agreement; (2) the Watermaster, IEUA, Three Valleys and MWD signed amendment to the DYYP is void; (3) therefore, no entity in the Basin could have lawfully pumped Stored Water under the

DYYP from PY 19/20 forward under the terms of the 2019 Agreement; (4) accordingly, all water pumped from the ground by FWC and CVWD during that period must have been native groundwater; and (5) as a result, all that pumping constituted native water production subject to regular Watermaster assessments.

Each of these assertions is wrong. Moreover, Ontario's chain of illogic falls if even one of these causal links is broken.

First, as explained above and in the Watermaster opposition, the Watermaster followed the proper process when approving the 2019 Letter Agreement.

Second, because that approval was not challenged within 90 days by Ontario or any other party, that agreement is valid.

Third, neither the Court, nor the four parties to the DYYP Agreements have suspended the program. Thus, the program remains in full effect, subject to the terms of the DYYP Agreement and amendments. And, even if the 2019 Letter Agreement had been adopted incorrectly—which it was not—the local Operating Parties have legally and justifiably relied upon its parameters and criteria from FP 19/20 to date.

Fourth, from PY 19/20 forward, much of FWC's and CVWD's groundwater pumping has taken the form of withdrawal of Stored Water from the MWD Storage Account. (Swift Decl., ¶ 2; Espinoza Decl. ¶ 11.) And, Ontario did not challenge the FY 19/20 or FY 20/21 Assessment packages within 90 days, as required by the Judgment. (Judgment, ¶ 31(c).) As a result, those earlier year packages are not subject to being redone at this late stage.

Finally, even if Ontario were correct in its first four assertions, each Operating Party has the right to decide the type of water it pumped from the Basin from PY 20/21 forward. In this case, FWC and CVWD each elected to pump MWD stored water from the DYYP. Contrary to the underpinnings of its filing, Ontario has no unilateral right to change the type or character of water FWC and CVWD pump from the Basin. That decision rests with FWC and CVWD.

And, FWC and CVWD would never have pumped DYYP Stored Water had such withdrawals been subject to regular Watermaster Assessments. (Swift Decl., ¶ 5; Espinoza Decl. ¶ 11.) Indeed, it would have been cost ineffective to do so. Rather, they would have each purchased imported surface

water directly from MWD or acquired other available supplies. Any Ontario assertion to the contrary would be false, speculative and inadmissible for lack of knowledge of the intent of FWC and CVWD. See Evid. Code, §§ 210, 350, 351, 702(a), 800, 801.

CONCLUSION

For the above reasons, FWC and CVWD ask that this Court deny Ontario's application in full.

Dated: March 25, 2022

LAGERLOF, LLP

By _____
Thomas S. Bunn III
Attorneys for Fontana Water Company

Dated: March 25, 2022

BEST BEST & KRIEGER

By /s/ Steve Anderson
Steve Anderson
Attorneys for Cucamonga Valley Water District

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 March 25, 2022 I served the following:

1. FONTANA WATER COMPANY'S AND CUCAMONGA VALLEY WATER DISTRICT'S OPPOSITION TO CITY OF ONTARIO'S APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGMENT, PARAGRAPH 31(C) TO CHALLENGE WATERMASTER ACTION/DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE

/ 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 March 25, 2022 in Rancho Cucamonga, California.

By: Ruby Favela
Chino Basin Watermaster

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO HONORABLE STANFORD E. REICHERT

DECLARATION OF COURTNEY JONES IN SUPPORT OF CITY OF ONTARIO'S COMBINED REPLY TO OPPOSITIONS

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

Hearing:
Date: June 17, 2022
Time: 1:30 p.m.
Dept. S35

I, Courtney Jones, declare as follows:

1. I have personal knowledge of the facts stated in this Declaration and, if called as a witness, could and would testify competently to those facts.

2. I am the Water Resources and Regulatory Affairs Director at the City of Ontario ("Ontario") and have held that position since March 2021. Prior to March 2021, I was employed by Ontario as a Senior Associate Civil Engineer and subsequently the Water Resources Manager.

3. I make this Declaration in support of Ontario's Combined Reply to the Oppositions of Watermaster, Fontana Water Company and Cucamonga Valley Water District, and Inland Empire Utilities Agency to the Application for an Order to Extend Time Under Judgment, Paragraph 31(c) to Challenge Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment Package

I.WATERMASTER AUTHORITY

A. 2019 Letter Agreement Approval, 2015 Amendment Approval, and Impact to Performance Criteria

4. Watermaster did not have the authority to approve the 2019 Letter Agreement at a staff level and/or defer their obligations as required by Court orders and court approved agreements to another agency.

5. As outlined in the Section II, below, the Funding Agreement, the Storage Agreement and a subsequent material amendment, Amendment 8, to the Dry Year Yield Program ("DYY Program") were approved through the Watermaster Approval Process with amendments to Local Agency Agreements. This included compliance with the the Watermaster Approval Process as agendized business items with proper notice.

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6. The chart below compares the 2015 Amendment No. 8 timeline versus 2019 Letter Agreement Timeline. A flow chart depicting the approval process for the 2015 Amendment No. 8 and the 2019 Letter Agreement are attached as Exhibits 1 and 2. (See RJN, Exs. 20-25, 34-36.)

Milestones	2015 Amendment No. 8	2019 Letter Agreement
Consideration amongst Operating Parties	Prior to June 2014	Prior to September 2018
Local Agency Agreements with IEUA	Amended between June & December 2014	No Amendments
Watermaster Pool Meeting Item	10/09/2014 - Agenda Item for Approval	09/13/2018 - GM Report Item, no approval
Watermaster Advisory Committee Meeting	10/16/2014 - Agenda Item for Approval	09/20/2018 - GM Report Item, no approval
Watermaster Board Meeting	10/23/2014 - Agenda Item for Approval	09/27/2018 - GM Report Item, no approval
Watermaster General Manager Signature	October 28, 2014	February 19, 2019
Fully Executed	January 23, 2015	March 20, 2019

7. The Funding Agreement has been amended eight times since the initial agreement was signed. Amendments Nos. 1 thru 7 were not approved through the Watermaster Approval Process because, according to Watermaster's own staff report, "[p]rior amendments to the Agreement pertain to the completion timing of facilities and changes in sources of funds…" (See RJN, Ex. 25 at p. 2.) The amendments include:

(a) Amendment No. 1 to Funding Agreement, dated May 6, 2004

(b) Amendment No. 2 to Funding Agreement, dated August 31, 2004

(c) Amendment No. 3 to Funding Agreement, dated 2005

(d) Amendment No. 4 to Funding Agreement, dated May 16, 2008

(e) Amendment No. 5 to Funding Agreement, dated March 6, 2009

(f) Amendment No. 6 to Funding Agreement, dated September 2, 2009

(g) Amendment No. 7 to Funding Agreement, dated July 2010

(h) Amendment No. 8 to Funding Agreement, dated January 28, 2015

8. The 2015 Amendment No. 8 would be the first actual amendment to the DYY Program (not the Funding Agreement) since it amended the performance criteria and needed the amending of the Local Agency Agreements, which all are based on that performance criteria. The performance criteria are included in the Funding Agreement, but as stated in Section II. below, the DYY Program itself is comprised of the Local Agency Agreements (which contain the performance criteria) and the Storage Agreement.

9. The 2019 Letter Agreement amended both performance criteria (by removing the shift obligation and made production out of the DYY Program as voluntary without needing an MWD Call) and changed who could participate in the DYY Program (Fontana Water Company was not part of the DYY Program since they had no local agency agreement). Watermaster staff did not have the authority to approve and sign this 2019 Letter Agreement without approval through the Watermaster Approval Process. The 2019 Letter Agreement changed the performance criteria and should have been approved through the Watermaster Approval Process as an Amendment to the DYY Program.

10. The chart below illustrates the change in the performance criteria caused by the 2019 Letter Agreement when compared to the original DYY Program.

DYY Performance Criteria 2004 vs FY 2021/22 Assessment Package

	2004 - Original DYY Agreement		FY 2021/22 Assessment Package	
Appropriator	**Req. IW Shift (AF)**	**Req. DYY GW Take (AF)**	**Req. IW Shift (AF)**	**Req. DYY GW Take (AF)**
City of Chino	1,159	1,159	0	0
City of Chino Hills	1,448	1,448	0	0
City of Ontario	8,076	8,076	0	0
City of Pomona	2,000	2,000	0	0
City of Upland	3,001	3,001	0	0
Cucamonga Valley Water District	11,353	11,353	0	20,500
Fontana Water Company	No Local Agency Agreement		0	2,500
Jurupa Community Services District	2,000	2,000	0	0
Monte Vista Water District	3,963	3,963	0	0
Total	33,000	33,000	0	23,000

(Compare RJN, Ex. 11 and Ex. 60.)

11. Watermaster authority in regard to cooperation with other agencies is limited under the Judgment. "Subject to prior recommendation or approval of the Advisory Committee, Watermaster may act jointly or cooperate with agencies of the United States and the State of California or any political subdivisions, municipalities or districts or any person to the end that the purpose of the Physical Solution may be fully and economically carried out." (See RJN, Ex. 1 at ¶ 26.)

12. Under the Judgment, the powers and functions of the Advisory Committee includes: "In the event Watermaster proposes to take discretionary action, other than approval or disapproval of a Pool Committee action or recommendation property transmitted, or execute any agreement not theretofore within the scope of an Advisory Committee recommendation, 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." (See RJN, Ex. 1 at ¶ 38(b)[2], Ex. 3 at pp. 18, 21, 25.)

13. The 2019 Letter Agreement revised court orders and court approved agreements, was not properly noticed, and was not authorized at any Watermaster meeting.

B. Proper Noticing - 2012 Non-Agricultural Pool versus Appropriative Pool Ruling and Appeal

14. In 2010, the Non-Agricultural Pool ("Non-Ag Pool") filed a motion to have the court find and declare pursuant to paragraph 31 of the Judgment that, (1) Watermaster on behalf of the Appropriative Pool did not deliver to the members of the Non-Agricultural pool a notice of intent to purchase in the time and manner required by the purchase and sale agreement for the purchase of water by Watermaster from the overlying (Non-Agricultural) pool dated September 27, 2007 (see RJN, Ex. 33 at Ex. G); and (2) all of the water subject thereto should be restored to the accounts of the members of the Non-Agricultural (overlying) pool. (*Id.*, Ex. 4 at 3:11-17.)

15. "The trial court ruled that the Watermaster did give notice, by means of the agenda packages and the related discussions…" (RJN, Ex. 5 at p. 3.)

//

16. The Non-Ag Pool appealed the ruling and contended that:

"The Trial Court erred by finding that the Watermaster give notice, because:

(a) The notice never became final.
(b) The Watermaster did not give notice in the manner specific in the judgment.
(c) The Watermaster did not give notice to individual members of the Non-Agricultural Pool.
(d) Participants in meetings did not actually receive an agenda package; they merely received an email saying that the agenda package was available online." (RJN, Ex. 5 at p. 4.)

17. The Court of Appeal agreed with the Non-Ag Pool's contention. "We agree that the notice never became final. Or, to put it another way, everything that was communicated to the Non-Agricultural Pool (or its representative) about giving notice or purchasing the water came with the caveat that the Watermaster had not yet definitively decided to do either; thus, these communications did not constitute notice of intent to purchase." (RJN, Ex. 5 at p. 4.) The Court of Appeal concluded that it "must reverse the trial court's order." (*Id*. at p. 5.)

18. On June 29, 2012 the Trial Court reversed its ruling pursuant to the order of the Court of Appeal. (RJN, Ex. 6.)

II. DRY YEAR YIELD PROGRAM DEFINED

A. 2003 Funding Agreement

19. The Groundwater Storage Program Funding Agreement ("Funding Agreement") was approved through the Chino Basin Watermaster approval process in February 2003 and signed by the Metropolitan Water District ("MWD"), Inland Empire Utilities Agency ("IEUA"), Three Valleys Municipal Water District ("TVMWD"), and Chino Basin Watermaster ("Watermaster") in June 2003. (See Request for Judicial Notice ("RJN"), Ex. 11.) This Funding Agreement was ultimately approved via a June 5, 2003 Court Order ("2003 Court Order"). (*Id*., Ex. 12.) A flow chart depicting the approval process for the Funding Agreement is attached as Exhibit 3.

20. As stated within the 2003 Court Order, "Watermaster takes the position that the Funding Agreement itself is a not a 'Storage Agreement,' as that term is used in the Judgment. '[W]hile the [Funding] Agreement commits the parties to allocate 100,000 AF of the 500,000 AF Storage and Recovery Program to Metropolitan, the specific location and operation of the facilities

necessary to accomplish this commitment must still be analyzed by Watermaster under the Material Physical Injury standard of the Peace Agreement and Rules and Regulations. This approval will take the form of Watermaster approval of the Local Agency Agreements by way of a Storage and Recovery Application filed under Article X of Watermaster's Rules and Regulations.'" (RJN, Ex. 12 at 3:1-9.)

21. Also stated is, "However, it is clear that until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application, or some equivalent approval process is completed, the storage and recovery cannot be undertaken. The Judgment mandates that the Funding Agreement be reviewed in this context." (RJN, Ex. 12 at 3:22-26.)

22. The 2003 Court Order only declares that the Dry Year Yield Program is "described" in the Funding Agreement: "The Court finds that the weight of evidence support Watermaster's finding that the ***DYY Program, as described in the Funding Agreement***, will provide broad mutual benefits to the parties to the Judgment." (RJN, Ex. 12 at 6:15-17 (emphasis added).)

23. Exhibit G of the Funding Agreement also describes the "Chino Basin Conjunctive Use 'Dry Year' Storage Project Performance Criteria." (RJN, Ex. 11 at Ex. G.) However, the Performance Criteria as dictated by MWD to be performed by IEUA and TVMWD. IEUA and TVMWD are not local water producers, and these criteria are placed onto their member agencies to perform.

24. As evidenced above in the contents of the 2003 Court Order, it must be concluded that the Funding Agreement itself is not the DYY Program. Rather, the DYY Program is comprised of "Local Agency Agreements" and a "Storage and Recovery Application."

B. 2003 Local Agency Agreements[1]

25. From March to July 2003, Local Agency Agreements were executed between IEUA/TVMWD and their Member Agencies (see list below):

(a) Cucamonga Valley Water District (CVWD)

[1] Copies of the CVWD, Ontario, and JCSD via Ontario Local Agency Agreements are included in the RJN at Exhibits 13-15.

(b) City of Pomona (Pomona)

(c) City of Chino Hills (Chino Hills)

(d) City of Chino (Chino)

(e) Monte Vista Water District (MVWD)

(f) City of Ontario (Ontario)

(g) City of Upland (Upland)

(h) Jurupa Community Services District (JCSD) via Ontario

26. These Local Agency Agreements contain an Exhibit A, which specifies each agency's facilities to be used towards operation of the DYY Program as funded by the Funding Agreement. (See RJN, Exs. 13-15 at Ex. A.) Also, Exhibit B of these agreements describes each agencies' performance targets for both the reduction in imported water demand and corresponding increase in local groundwater pumping. (*Id*. at Ex. B.) These local agency performance targets describe how the MWD performance criteria to be performed by IEUA and TVMWD would be met.

C. Storage and Recovery Application, and Storage Agreement

27. On April 2, 2003 IEUA submitted an Application under Article X of the Watermaster Rules and Regulations for a 100,000 acre-foot storage account in Watermaster's Storage and Recovery Program. (See RJN, Ex. 17 at 13:16-18.) This storage account will be used to implement the terms of the Groundwater Storage Program Funding Agreement ("Funding Agreement") that was executed by IEUA, TVMWD, Watermaster, and MWD on June 19, 2003. (*Id*., Ex. 11.)

28. On October 23, 2003, the Advisory Committee and Board considered the Application and adopted the findings and recommendation of the staff report to approve the Application conditioned upon yearly approval of the Annual Operating Plan. (See RJN, Ex. 17 at 21:20-22.)

29. On June 24, 2004, the Watermaster's Motion for Approval of Storage and Recovery Program Agreement (DYY Storage Agreement) was argued and submitted to the Court. The DYY Storage Agreement was approved by the Court on the same date (the "2004 Court Order"). (RJN,

Ex. 18.) The DYY Storage Agreement states that "Any modification of facilities that is materially different from those contemplated by the Local Agency Agreement will require the filing of a new application…" (*Id.*, Ex. 17 at Ex. A, ¶ III.A.2.) Also, "Watermaster shall not approve an Annual Operating Plan that may cause Material Physical Injury…" (*Id.*, Ex. 17 at Ex. A, ¶ IV.F.)

30. The 2004 Court Order states "Finally, the Judgment provides that agreements for storage 'shall first be approved by written order of the Court' and must include terms that will 'preclude operations which will have a substantial adverse impact on other producers.'" (RJN, Ex. 18 at 3:6-9, quoting Judgment at ¶ 28 [RJN, Ex. 1].) The 2004 Court Order also states "The DYY Storage Agreement calls for the development of Annual Operating Plans…and is to have sufficient detail to allow Watermaster to assess the potential for any adverse impacts on producers. Pursuant to Judgment paragraph 28, Watermaster may not approve an Annual Operating Plan that will have a substantial adverse impact on producers." (*Id.*, Ex. 18 at 4:3-8; see also RJN Ex. 1 at ¶ 28.)

31. It should be concluded that the Local Agency Agreements and DYY Storage Agreement as referenced in the 2003 and 2004 Court Orders, are the DYY Program. Any substantial changes that affect these elements of the DYY Program should be approved through the Watermaster Approval Process and not only approved by the signatories of the Funding Agreement.

III. 2019 LETTER AGREEMENT, 2019 PEACE AGREEMENT AMENDMENT, DESALTER REPLENISHMENT OBLIGATION

A. 2019 Letter Agreement

32. In 2018, IEUA initiated discussions with the participating agencies for implementing and approving revisions to the DYY Program. These revisions would significantly change the DYY Program by allowing voluntary production out of the DYY Program storage account without the corresponding shift and reduction of imported water deliveries as part of the DYY Program and approved local agency agreements. These changes provided exemptions from the approved and amended performance criteria in the local agency agreements and allowed for unprecedented amounts of DYY Program production by any one agency. This letter agreement, as

implemented, also allowed for agencies without a local agency agreement to participate in the DYY Program.

33. In September 2018, the topic of the letter agreement was listed as "Proposed Changes to DDY Program Operation" under the General Manger's Report in the Pools, Advisory Committee, and Board meeting packages. However, there was no staff report and the General Manager's report was only verbal. The letter agreement was not approved through the Watermaster Approval Process and there was no amendment to the local agency agreements or storage agreement. (See RJN, Exs. 34-36 at Item III.D.1.) Attached hereto as Exhibits 4-6 are true and correct copies of transcripts of the General Manager's report at the meetings of the Appropriative Pool, Advisory Committee and Board.

34. Through the discussion, Ontario staff had questions and concerns with the proposed changes. On July 31, 2018, Ontario emailed IEUA explaining that the City is "neutral" regarding the proposed letter agreement and "Ontario cannot a position of support because we cannot know the full effects of the proposed changes. Without these details, which would best be explained and memorialized in an amendment, we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise." Ontario did not approve the 2019 Letter Agreement. A true and correct copy of the July 31, 2018 email correspondence is attached hereto as Exhibit 7.

35. The 2019 Letter Agreement was signed by the parties to the Funding Agreement in February 2019. (RJN, Ex. 41.)

B. 2019 Appropriative Pool Pooling Plan and Peace Agreement Amendment

36. On November 27, 2018, the Appropriative Pool approved the "2018 Agreement to Appropriative Pool Pooling Plan and CAMA Amendments" and "[f]urther, the Pool directs its counsel to join in the motion to approve the Appropriative Pool Pooling Plan and CAMA Amendments." (RJN, Ex. 40.) On March 15, 2019 the Court ordered changes to the Appropriative Pool Pooling Plan and amendments to the Peace Agreement. (*Id*., Ex. 10.) Article VI of the Peace II Agreement was significantly amended to expand upon Section 6.2 with respect to Desalter Replenishment. (*Id*., Ex. 10, Ex. A at ¶ 6.) For the purposes of determining "Adjusted Physical

Production" as part of calculating each party's Remaining Desalter Replenishment Obligation (RDRO), subsection (b)(iv) was added to Section 6.2. (*Ibid*.) Specifically, under subsection (b)(iv)(3), the following was added "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." (*Ibid*. (emphasis added).)

37. This amendment to the Peace Agreement was ordered by the Court in March 2019, the month after the 2019 Letter Agreement. This Court order amending a Court approved agreement allowed for DYY Program water production to be exempt from the RDRO calculation, but does not grant any exemption from Watermaster administrative and special project expenses. This is an example that material changes related to Storage & Recovery Programs including the DYY Program can, should, or are tied to the Peace Agreement, which amendments required formal Watermaster and Court approvals.

38. As described in the Section II, *supra*, the DYY Program consists of both the Local Agency Agreements and DYY Storage Agreement. As specified in the amendment to the Peace Agreement, this exemption only applies to "approved" storage and recovery programs. (RJN, Ex. 10 at Ex. A, ¶ 6(b)(iv)(3).) It should be concluded that the DYY Program consistent with approved and amended local agency agreements and the approved storage agreement in effect in 2015 is the only "approved" storage and recovery program.

39. The 2019 Letter Agreement significantly changed the DYY Program, but was not approved through the Watermaster Approval Process, was signed only by signatories to the Funding Agreement, and was executed without amending the local agency agreements. (See RJN, Ex. 41.)

IV. HISTORY AND PRACTICE FOR WATERMASTER ASSESSMENTS

A. Assessable Production

40. The relevant governing documents of the Chino Groundwater Basin state that all water produced is assessed. The Judgment defines "Produce or Produced" as "[t]o pump or extract

ground water from Chino Basin." (RJN, Ex. 1 at 3:16.) "Production" is defined as "[a]nnual quantity, stated in acre feet, of water produced." (*Id*. at 3:18.)

41. The Judgment further provides that "[p]roduction assessments, on whatever basis, may be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool." (RJN, Ex. 1 at ¶ 51.)

42. The Appropriative Pool Pooling Plan states, "[c]osts 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." (RJN, Ex. 1 at Ex. H, ¶ 6.)

43. The Judgment also provides that "Watermaster shall have the power to levy assessments against the parties (other than minimal pumpers) based upon production during the preceding period of assessable production…" (RJN, Ex. 1 at ¶ 53.)

44. Under Article IV of the Watermaster's Rules and Regulations, "Watermaster shall levy assessments against the parties…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.]" (RJN, Ex. 2 at § 4.1.) Under Section 4.4, assessment adjustments are described, but neither production from a storage and recovery program or the DYY Program is applicable. (*Id*. at § 4.4.)

45. From review of the above governing documents and relevant agreements and court orders, it must be concluded that nothing exempts groundwater produced through the Dry Year Yield Program from assessments. It can be concluded that any water produced from the Chino Basin is subject to production-based assessments unless otherwise exempt from a court approved agreement or court order.

B. Supplemental Water is Assessed

46. As described above, the governing documents state that all production is assessed. For the purposes of assessable production, there is no distinction between native, stored, or supplemental water. Stored supplemental water is also subject to Watermaster assessments when it is produced, as evidenced in the most recent Watermaster Assessment Package for Assessment Year 2021-2022 (Production Year 2020-2021). (See RJN, Ex. 60.) The Fontana Water Company

("FWC") purchased the City of Fontana's recharged recycled water credit and transferred 2,722.510 AF from FWC's Local Supplemental Storage Recharged Recycled Account to its Excess Carryover (ECO) Storage Account which was then used as Annual Production Right and was included in FWC's assessable production. (*Id.* at pp. 8.1, 10.1-14.1.) Recycled water is a mixture of multiple water sources (imported, groundwater, stormwater) treated through IEUA's regional treatment plants and cannot reasonably be categorized as native water.

C. Imported Water is Assessed

47. Like Supplemental Water, imported water purchased for replenishment purposes is included as assessable production. This is also evidenced in the most recent Assessment Package, specifically for Niagara Bottling LLC ("Niagara"). (RJN, Ex. 60 at pp. 8.1, 10.1, 25.1.) Niagara does not own any water rights in the Chino Basin but is a party to the Judgment and in the Appropriative Pool. Every year, Niagara pays both the replenishment costs and Watermaster production-based assessments on any water it produces from the Chino Basin. If only "native" water is assessed, then it would be concluded that Niagara should only pay replenishment assessments and not Watermaster assessments since Niagara is essentially producing imported water out of the basin.

48. There is no court approved agreement or court order that exempts water produced from a Storage and Recovery program from assessments and there is no evidence that only production of native water is assessed.

D. First Cycle of DYY Program Water was Assessed

49. The first cycle of the DYY Program occurred from Production Years 2002/2003 to 2010/2011, under Assessment Packages 2003/2004 to 2011/2012. (See RJN, Exs. 44-52.) Approximately 90% all water within the DYY Program storage account was subject to Watermaster assessments paid by the participating Appropriative Pool members. It is unclear as to why "In Lieu Recharge" was subject to Watermaster assessments and why "Wet Water Recharge" was not.

E. Second Cycle of DYY Program Water was Not Assessed

50. The second cycle of the DYY Program occurred from Production Years 2016/2017 to 2021/2022, under Assessment Packages 2017/2018 to 2022/2023 (Assessment Package for

2022/2023 not yet completed). (See RJN, Exs. 53-60.) No water within the DYY Program storage account was subject to Watermaster assessments. Attached as Exhibit 8 is a true and correct copy of my correspondence with IEUA relating to the DYY Program and voluntary withdrawal program.

First DYY Cycle Put & Take Assessments

Production Year	Assessment Year	"PUT" - Wet Water Recharge (AF)	"PUT" - In Lieu Recharge (AF)	"TAKE" (AF)[1]	Water Assessed (AF)	Water Not Assessed (AF)[1]
2002/2003	2003/2004		3,000.00		3,000.00	
2003/2004	2004/2005	2,463.40	16,098.30		16,098.30	2,463.40
2004/2005	2005/2006		13,623.25		13,623.25	
2005/2006	2006/2007		20,673.56		20,673.56	
2006/2007	2007/2008		19,636.00		19,636.00	
2007/2008	2008/2009	8,200.70	1,169.25	10,065.94	1,169.25	8,200.70
2008/2009	2009/2010			38,886.20		
2009/2010	2010/2011			25,260.60		
2010/2011	2011/2012			8,372.23		
Totals		84,864.45		82,584.97	74,200.35	8,384.63

Note:
1. Due to basin losses, less water was available for "Take" than was "Put"

(See RJN, Exs. 44-52.)

Second DYY Cycle Put & Take Assessments

Production Year	Assessment Year	"PUT" - Wet Water Recharge (AF)	"PUT" - In Lieu Recharge (AF)	"TAKE" (AF)[1]	Water Assessed (AF)	Water Not Assessed (AF)[1]
2016/2017	2017/2018	6,314.90				6,314.90
2017/2018	2018/2019	35,069.50				35,069.50
2018/2019	2019/2020	4,617.44				4,617.44
2019/2020	2020/2021	17,419.53		17,394.80		17,419.53
2020/2021	2021/2022			23,000.00		
2021/2022[2]	2022/2023			22,928.83		
Totals		63,421.36		63,323.63	0.00	63,323.63

Note:
1. Due to basin losses, less water was available for "Take" than was "Put"
2. Per 2021/2022 DYY Operating Plan, remaining balance of DYY to be produced by CVWD & FWC

(See RJN, Exs. 53-60.)

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V. DYY COST SHIFTING AND FINANCIAL IMPACT

A. Cost Shifting of Watermaster Production Based Assessments

1. Judgment Administration and OBMP and Program Elements 1-9 Fixed Costs

51. As explained in Section IV., *supra*, the Judgment provides that "Watermaster shall have the power to levy assessments against the parties (other than minimal pumpers) based upon production…" (RJN, Ex. 1 at ¶ 53.)

52. "The expenses of administration of this Physical Solution shall be categorized as either (a) general Watermaster administrative expense, or (b) special project expense." (RJN, Ex. 1 at ¶ 54.) These two categories of expenses are a Watermaster related fixed cost as approved with the annual budget.

53. The Judgment provides that general Watermaster administrative expenses "shall include office rental, general personnel expenses, supplies and office equipment, and related incidental expense and general overhead." (RJN, Ex. 1 at ¶ 54(a).)

54. All three (3) Pools, (Appropriative, Agricultural, and Non-Agricultural) are assessed for Watermaster administrative expenses based on production. The Appropriative Pool pays the Agricultural Pool's share of administrative expenses per Section 5.4 of the Peace Agreement. (See RJN, Ex. 30 at § 5.4.)

55. This is categorized in the annual Watermaster Assessment Package as "Judgment Administration" as a fixed cost based on the approved annual budget. (See RJN, Ex. 60 at p. 22.1.)

56. Under the Judgment, special project expenses "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 Pool Committee, or pursuant to written order of the Court." (RJN, Ex. 1 at ¶ 54(b).)

57. The annual fixed costs associated with Watermaster administration of the Optimum Basin Management Program ("OBMP") Program Elements (PE) 1 thru 9 are assessed based on production to all three (3) Pools, (Appropriative, Agricultural, and Non-Agricultural) for Watermaster administrative expenses based on production. The OBMP and its related expenses were agreed to by the Parties as memorialized in the Court Ordered "Peace Agreement" (2000) and "Peace II Agreement" (2007). (See RJN, Ex. 30 at § VII, Ex. 33, generally.)

58. This is categorized in the Watermaster Annual Assessment Package as "OBMP & Program Elements 1-9" as a fixed cost based on the approved annual budget. (See RJN, Ex. 60 at p. 22.1.)

59. These two categories of expenses are fixed annual costs and are assessed to Appropriative Pool parties based on each party's prior year's total groundwater production and exchanges. The determination of actual assessable production is subject to adjustments based on provisions within court ordered agreements. (See RJN, Ex. 60 at p. 10.1.)

60. Under "Storage & Recovery Program(s)" Column 10J of the assessment package, Watermaster reduces a party's assessable production by the amount of storage & recovery program or DYY Program water produced by that party. (See RJN, Ex. 60 at p. 10.1.)

61. The total Watermaster annual fixed cost is divided by the annual total production and exchanges number of all parties of the basin to obtain a dollar amount per volume unit cost ($/Acre-Foot). This unit cost is then used to assess each party, based on their specific amount of total production and exchange. Since costs are fixed, when the annual total production and exchanges number increase, the unit cost decreases, and when the annual production number decrease, the unit cost increases. (See RJN, Ex. 60 at p. 22.1.)

62. When "Storage & Recovery Program(s)" or DYY Program production was claimed by a party, that party's annual total production and exchanges number decreases by the same amount. This then decreases the total annual production number used to determine the unit cost for fixed costs. This invariably shifts the costs onto other Parties by increasing the overall unit cost, which is applied to Parties based on their individual production amounts.

63. The chart below is a representation of how costs are shifted away from one party onto other parties, by reducing total production which increases the overall unit cost. The "Fixed Costs Shifted" column represents the net increase or decrease in cost each Party paid due to the higher unit cost resulting from DYY production claimed. CVWD paid approximately $1M less than it would have needed to pay if it did not claim any DYY production at the lower unit cost of $57.20/AF. The other Parties paid $1M more than they would have needed to pay because

CVWD's DYY production claim increased the overall unit cost to $70.52/AF. CVWD shifted $1M in costs away from itself to the rest of the Chino Basin Parties.

Chino Basin Parties	Actual FY Production (AF)	DYY Production Claimed (AF)	Total Production and Exchanges (AF)	Fixed Costs Shifted
CVWD	26,225.70	20,500.00	5,725.70	-$1,084,539
FWC	13,565.30	2,500.00	11,065.30	$8,229
Ontario	17,171.10		17,171.10	$279,078
Other Parties	64,844.10		64,844.10	$797,233
TOTAL	**121,806.20**	**23,000.00**	**98,806.20**	**$0.00**

Notes:
The total annual fixed cost is assumed at $6,967,848 and total production and exchanges is 98,806 AF for a unit cost of $70.52/AF.
DYY claims decreased the total production from 121,806 to 98,806 which increased unit cost from $57.20/AF to $70.52/AF = $13.32/AF.

(RJN, Ex. 60.)

B. Remaining Desalter Replenishment Obligation Shift and Financial Impact

64. On Page 20.1 of the assessment package, the determination of Remaining Desalter Replenishment Obligation ("RDRO") by each Party is a function of the calculated adjusted physical production. Similar to the adjustments explained above, any "Storage and Recovery Programs" production claimed by a Party reduces that Party's physical production and results in a reduced adjusted physical production. (See RJN, Ex. 60 at p. 20.1.)

65. The "Total Remaining Desalter Replenishment Obligation" is an annual fixed amount that must be replenished by Appropriative Pool Parties. (See RJN, Ex. 60 at p. 20.1.) The share applied to each Party is a function of each Party's adjusted physical production. When one Party has a reduced adjusted physical production (e.g. reduction due to DYY production claims), that Party's share of the RDRO is proportionately reduced and shifted onto the other Parties. RDRO is met by most Parties using existing stored water rights and those water rights have financial value.

66. As discussed in Section III., *supra*, there was an amendment to the Peace Agreement which allows for water produced from "approved" Storage & Recovery programs to be reduced from physical production. (See RJN, Ex. 33.) However, the 2nd cycle of the DYY Program was

operated based on provisions of the 2019 Letter Agreement which is not the Approved DYY Program. The Approved DYY Program consists of the provisions of the 2015 Amendment, which went through the Watermaster Approval Process. The 2nd cycle of the DYY Program does not meet the criteria established as part of the Approved DYY Program, therefore DYY Program production claims should not have been reduced from the physical production.

67. The chart below is a representation of how RDRO was shifted away from one Appropriative Pool party onto other Appropriative Pool parties, by reducing physical production which decreased the proportional share of RDRO of the party. The "Share of RDRO 16,879.4 AF Shifted" column represents the net increase or decrease in each party's obligation. CVWD was obligated to 2,265 AF less in RDRO than it would have been obligated to replenish if it did not claim any DYY production.

Appropriative Pool Parties	Actual FY Production (AF)	DYY Claimed (AF)	Total Adjusted Physical Production (AF)	Share of RDRO 16,879.4 AF Shifted	Financial Impact due to RDRO Shifting
CVWD	26,225.70	20,500.00	5,725.70	-2,264.90	-$1,518,984
FWC	13,565.30	2,500.00	11,065.30	-40.10	-$26,887
Ontario	21,750.80		18,656.80	638.00	$427,890
Other Parties	43,498.20		41,207.40	1,667.00	$1,117,981
TOTAL	**105,040.00**	**23,000.00**	**76,655.20**	**0.00**	**$0.00**

Notes
The value of RDRO water is assumed to equal the cost to purchase replenishment water at $670.65/AF

(RJN, Ex. 60.)

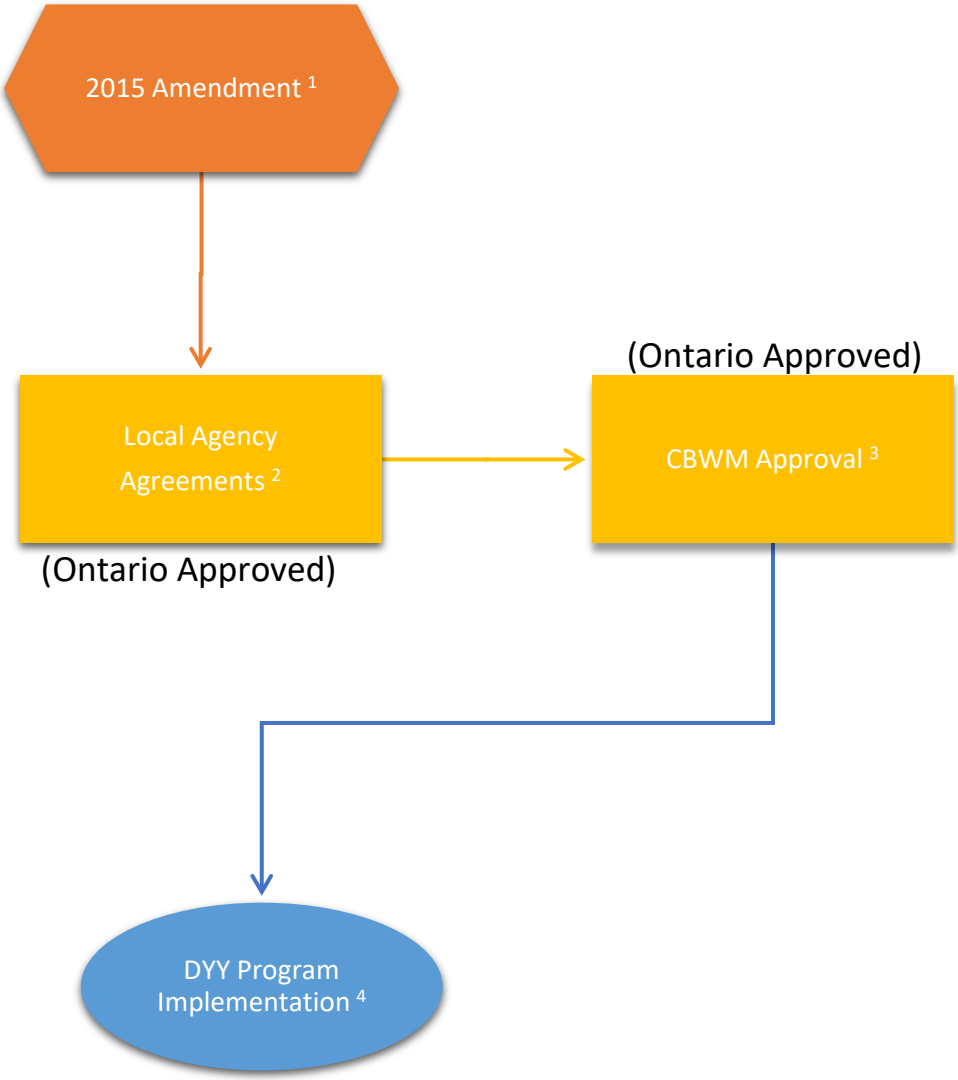
I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on this 26th day of May 2022, at Ontario, California.

Courtney Jones

Courtney Jones

EXHIBIT 1

2015 DYY PROGRAM AMENDMENT APPROVALS

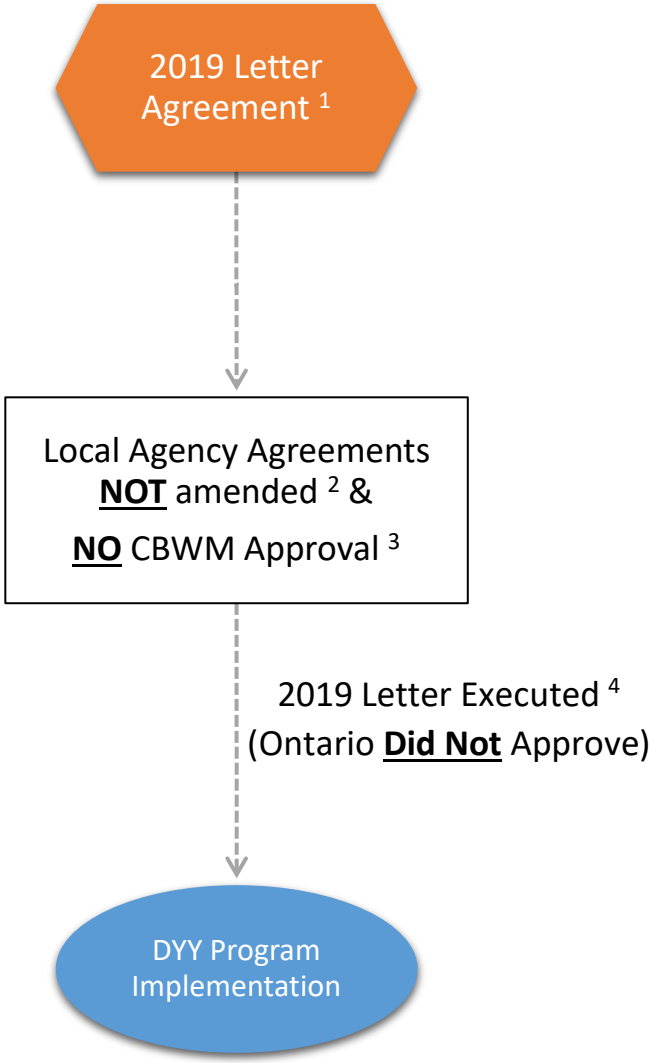


Note:

1. Consideration amongst Operating Parties for the 2015 Amendment No. 8, for amending Exhibit G of the DYY Program, started prior to June 2014.
2. Local Agency Agreements with IEUA were amended June through December 2014.
3. Approved through the Watermaster process in October 2014.
    a. Pool Meeting Item: October 9, 2014
    b. Advisory Committee Item: October 16, 2014
    c. Board Meeting Item: October 23, 2014
4. 2015 Amendment fully executed on January 23, 2015.

EXHIBIT 2

2019 LETTER AGREEMENT PROCESS

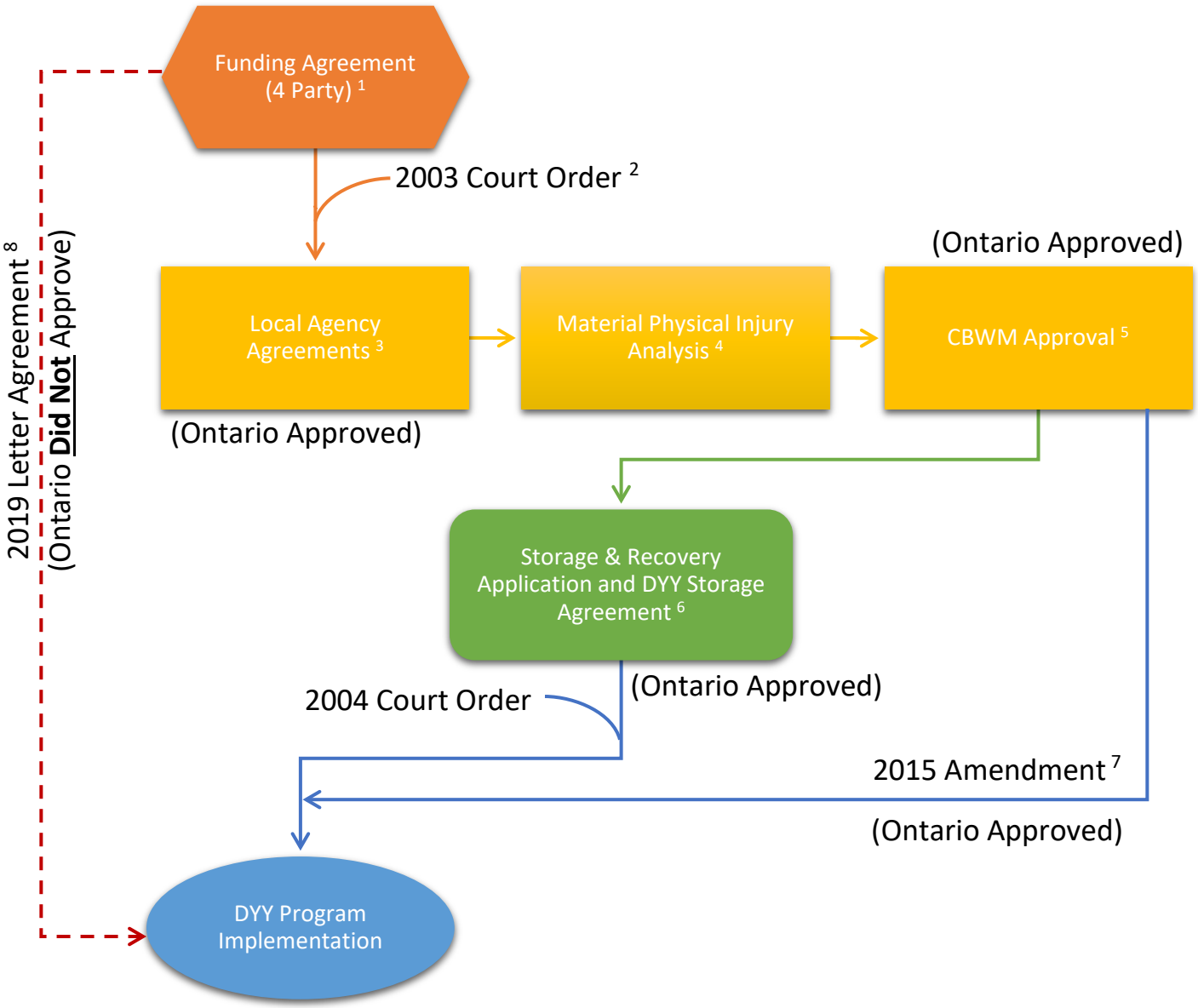


Note:

1. Consideration amongst Operating Parties for the 2019 Letter Agreement started prior to September 2018.
2. Local Agency Agreements with IEUA were not amended.
3. 2019 Letter Agreement was listed as a General Manager report item and no additional discussion provided and no approval from Pools, Advisory Committee, or Board during these meetings in September 2018.
    a. Pool Meeting Item: September 13, 2018
    b. Advisory Committee Item: September 20, 2018
    c. Board Meeting Item: September 27, 2018
4. 2019 Letter Agreement was fully executed on March 20, 2019 and signed by MWD, TVMWD, IEUA, and Chino Basin Watermaster, without Ontario approval.

EXHIBIT 3

DYY PROGRAM APPROVALS



Note:

1. Approved through Watermaster process (Pool, Advisory Committee, Board) in February 2003 and signed by MWD, TVMWD, IEUA, and Chino Basin Watermaster.
2. Ordered by the Court in June 2003, until the Court approves the Local Agency Agreements and Storage and Recovery Application, the storage and recovery program cannot be undertaken.
3. Between March 2003 & July 2003, agreements executed with IEUA & TVMWD Member Agencies
4. MPI Analysis performed in July 2003 by Wildermuth Environmental, Inc and presented in August 2003 through the Watermaster process.
5. MPI Analysis approved through Watermaster process in September 2003.
6. Approved through Watermaster process in October 2003 and March 2004, respectively.
7. The 2015 Amendment was approved through Watermaster process in October 2014, revised the performance criteria of Exhibit G, and all Local Agency Agreements were subsequently amended.
8. The 2019 Letter Agreement was not approved through the Watermaster process, did not receive Ontario's approval, and was signed by the Funding Agreement Parties in February 2019.

EXHIBIT 4

In Re: Chino Basin Watermaster)
9/13/2018 Appropriate Pool)
Meeting)
_____)

AUDIO TRANSCRIPTION

OF APPROPRIATE POOL MEETING

MEETING DATE: 9/13/2018

Transcribed by:
JOSIE C. GONZALEZ
CSR No. 13435
Job No. 10100869

In Re: Chino Basin Watermaster)
9/13/2018 Appropriate Pool)
Meeting)
_____)

Audio Transcription of Appropriate Pool Meeting, transcribed on May 13th, 2022 in San Diego, California, by JOSIE C. GONZALEZ, Certified Shorthand Reporter No. 13435, in and for the State of California.

* * *

Start of Audio

* * *

CHAIR LAYTON: The general manager, Peter.

MR. KAVOUNAS: A few items to bring to your attention, Madam Chair, members of the pool. There's some proposed changes to the dry year yield program operation that are being circulated. A letter has been prepared. I wanted to advise you that we do plan to sign it on behalf of Watermaster if it's necessary for acknowledgment at the -- the changes don't commit Watermaster to -- to anything. We actually don't think a letter is even required. It's just MWD offering its water at better terms to the parties, which they're entitled to do. So if there is a letter, we do plan to sign it.

CHAIR LAYTON: Peter -- sorry. Just because I don't know the proposed changes, do you -- do you happen to have a --

MR. KAVOUNAS: In a nutshell they -- they -- MWD are planning to make it so that instead of them only being able to call the water when they want to, to also allow the parties to purchase the water when they want to and still get the OMN discount.

CHAIR LAYTON: Okay.

MR. KAVOUNAS: Which is a great boon for the parties.

CHAIR LAYTON: Great. Thank you.

MR. KAVOUNAS: It's a good thing. Again, it doesn't affect Watermaster, but we are signatories to the original DYY. So if they want us to sign a letter of acknowledgement, I will go ahead and do that.

I wanted to alert you -- Item Number 2 wanted to alert you to -- CDA production has had some reduction because of water quality concerns. We don't have an updated model run at this point to be able to understand the effect, if there is any, on hydraulic control. We do plan to make the updated model run in November and will evaluate the changes and impacts, if there are any, and we'll advise you. CDA production is important. It's essential to maintain hydraulic control. So we're keeping a close eye on that.

The next item was to alert you to a business item on the --

CHAIR LAYTON: Sorry, Peter.

MR. KAVOUNAS: No worries.

CHAIR LAYTON: Going back to the water quality concerns.

MR. KAVOUNAS: Yeah.

CHAIR LAYTON: I thought the CDA wells are

supposed to be handling the water quality concerns. So I'm kind of confused what -- what's going on there.

MR. KAVOUNAS: I believe they -- they ran into -- is it -- they ran into 123 TCP that they were not prepared to treat, they're not designed to treat.

CHAIR LAYTON: Okay. Thank you.

MR. KAVOUNAS: And so they had to shut down one of the wells.

CHAIR LAYTON: All right. Thank you. I appreciate that.

MR. KAVOUNAS: Next on my agenda was to report to you that the non ag pool has an item on their agenda that isn't on your agenda as is Watermaster practice. They're reviewing their pooling plan, and I believe Todd probably had some conversations with them and he can report back to you if there's anything else.

And under other, 1 and 2 -- three things to bring to your attention. One is we're sending out a save the date on Tuesday, December 4th at 4:00 o'clock. We plan to host an event to commemorate the 40th anniversary of a judgment. So we'll be sending out invitations to boards, city councils, city managers, general managers, people that attend the pools, people that have been involved in the past but no longer involved with Chino basin. And we're looking forward to

having a keynote speaker and maybe a panel. And then the event will be followed by some form of libations, possibly dinner and that kind of thing. So I'd like to put that on your radar. Hope you can -- you can join us.

I mentioned to you earlier that we are preparing the assessment package. You can plan on getting invitation to a workshop in October. We'll probably do, as we've done before, the same format as before, and look to have it approved in November. And this would be the assessment package, again, with the existing rules which would be an assessment package that would later be revised if there is a -- and when there's a change in the rules. So it'll be based on a safe yield of 140,000. It'll be based on equal priority between land use conversion and early transfers, and everything else as has been done in the past.

And last but not least is -- there's an organization called CalDesal. I don't know if anybody heard of CalDesal. They're looking for membership. They sent us a letter asking if Watermaster would join. I plan to decline the invitation. I passed it onto IUA. And I think if IUA, Sean with its huge budget can join, it would be representing the region. I think IUA, CDA are probably a lot more qualified entities to belong to

CalDesal. I encourage any of you that are -- especially those that are big participants in the CDA to consider a membership because these organizations do need support, but I don't think Watermaster is the right organization. So I plan to decline it unless they get a strong sense that Watermaster should be a part of it. Now, I'll share this at advisory again and at the board, but my -- my instinct is to decline.

Andy, can you please go to non ag. Thank you. And that concludes my report, Madam Chair.

CHAIR LAYTON: All right. Any questions from Peter -- for Peter?

* * *

End of Audio

* * *

REPORTER'S CERTIFICATION

I, Josie C. Gonzalez, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing audio file was reported by me stenographically to the best of my ability and later transcribed into typewriting under my direction; that the foregoing is a true record of the audio file.

IN WITNESS WHEREOF, I have subscribed my name this 22nd day of May, 2022.

Josie Gonzalez

JOSIE C. GONZALEZ

EXHIBIT 5

In Re: Chino Basin Watermaster)
9/20/2018 Advisory Committee)
Meeting)
_____)

AUDIO TRANSCRIPTION

OF ADVISORY COMMITTEE MEETING

MEETING DATE: 9/20/2018

Transcribed by:
JOSIE C. GONZALEZ
CSR No. 13435
Job No. 10100870

In Re: Chino Basin Watermaster)
9/20/2018 Advisory Committee)
Meeting)
_____)

Audio Transcription of Advisory Committee Meeting, transcribed on May 13th, 2022 in San Diego, California, by JOSIE C. GONZALEZ, Certified Shorthand Reporter No. 13435, in and for the State of California.

* * *

Start of Audio

* * *

CHAIR PIERSON: It appears that Joe does not want to talk any further today, so we'll move into Peter, general manager's report.

MR. KAVOUNAS: Mr. Chairman, my report -- my report is the same as last week at the pools, and there is one item I would like to highlight that's under other which is to ask you to please block on your calendars the date of Tuesday, December the 4th at 4:00 o'clock. We're planning an event to commemorate the 40th anniversary of a judgment, and it would be a great opportunity to hear some thoughtful remarks from people who have been around and know a lot of things.

CHAIR PIERSON: Very good. That's very important to identify, so everybody put down that.

* * *

End of Audio

* * *

REPORTER'S CERTIFICATION

I, Josie C. Gonzalez, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing audio file was reported by me stenographically to the best of my ability and later transcribed into typewriting under my direction; that the foregoing is a true record of the audio file.

IN WITNESS WHEREOF, I have subscribed my name this 22nd day of May, 2022.

Josie Gonzalez

JOSIE C. GONZALEZ

EXHIBIT 6

In Re: Chino Basin Watermaster)
9/27/2018 Watermaster Board)
Meeting)
_____)

AUDIO TRANSCRIPTION

OF WATERMASTER BOARD MEETING

MEETING DATE: 9/27/2018

Transcribed by:
JOSIE C. GONZALEZ
CSR No. 13435
Job No. 10100872

In Re: Watermaster Board)
Meeting, 9/27/2018)
_____)

Audio Transcription of Watermaster Board Meeting, transcribed on May 13th, 2022 in San Diego, California, by JOSIE C. GONZALEZ, Certified Shorthand Reporter No. 13435, in and for the State of California.

* * *

Start of Audio

* * *

CHAIR PIERSON: General manager report.

MR. KAVOUNAS: Thank you, Mr. Chairman. A few items to bring to the board's attention. The first one is you're familiar with the dry year yield program that we have with Metropolitan Water District. That is an agreement that involves Watermaster among others; IUA, Three Valleys and Conservation District. The Metropolitan Water District has proposed some changes that are favorable to the parties. We don't believe they constitute a change to the agreement, so we don't intend to bring an agreement amendment to the board. There may be an acknowledgement letter. If there is, I wanted to let you know that I would be signing that acknowledgement letter.

Second is we are aware of some impacts to CDA production due to water quality. CDA production has -- has changed especially in the west end of -- of the CDA well field, and we are looking at that to make sure the hydraulic control is not affected. We don't have any conclusions at this point in time. We're just simply letting you know that this is an item that we're tracking.

Any questions?

CHAIR PIERSON: Any questions?

MR. KAVOUNAS: Okay. And a few -- a few other items. First one is you have at your packets a -- a reminder of the save the date for the Tuesday, December 4th. We plan to have an event to commemorate the 40th judgment anniversary which was this year. We do plan to make it a substantive event with some key takeaways for people that -- reflecting on the last 40 years of Chino basin being under local management of the -- I wouldn't say the good, the bad and the ugly. I would say the good and the lessons learned. So we very much look forward to having you. Staff is working very hard to have brought outreach, and we hope to bring together a lot of very important people that need to hear that they share this amazing resource called the Chino basin.

So a couple other notes in your -- in your packets relate to personnel movements. Most notable is that Mr. Rick Hanson has decided to retire from Three Valleys. He didn't take this lightly. I think he served something like 83 years. Sorry. 38 years. So someone else is there.

So that concludes my report, Mr. Chairman.

CHAIR PIERSON: Okay. Thank you very much.

* * *

End of Audio

* * *

REPORTER'S CERTIFICATION

I, Josie C. Gonzalez, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing audio file was reported by me stenographically to the best of my ability and later transcribed into typewriting under my direction; that the foregoing is a true record of the audio file.

IN WITNESS WHEREOF, I have subscribed my name this 22nd day of May, 2022.



JOSIE C. GONZALEZ

EXHIBIT 7

From: Katie Gienger
Sent: Tuesday, July 31, 2018 3:45 PM
To: 'Elizabeth Hurst'
Subject: RE: DYY letter revisions to clarify credits.

Hi Liz,

I appreciate your recent efforts to sit down and explain the program. Based on the information provided by IEUA, I am currently neutral regarding the proposed letter agreement between IEUA and MWD. As long as there are parameters that are undecided or unclear, Ontario cannot take a position of support because we cannot know the full effects of the proposed changes. Without these details, which would best be explained and memorialized in an amendment, we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise.

Sincerely,

Katie Gienger, P.E.
Water Resources Manager
ONTARIO MUNICIPAL UTILITIES COMPANY
1425 S. Bon View Avenue
Ontario, CA 91761-4406
Phone: (909) 395-2694
E-mail: kgienger@ontarioca.gov

From: Elizabeth Hurst [mailto:ehurst@ieua.org]
Sent: Monday, July 30, 2018 4:14 PM
To: Katie Gienger
Subject: FW: DYY letter revisions to clarify credits.

Katie,
Great! Thank you for Ontario's support. We will move forward with the letter.
Best
Liz

Elizabeth Hurst
Water Resources Planner
Inland Empire Utilities Agency
A MUNICIPAL WATER DISTRICT
"Water Smart - Thinking in Terms of Tomorrow"
6075 Kimball Ave / Chino, California 91708
Tel: 909-993-1634 / Fax:
EMail: ehurst@ieua.org Website: www.ieua.org

Connect with us



From: Katie Gienger <KGienger@ontarioca.gov>
Sent: Monday, July 30, 2018 3:43 PM
To: Elizabeth Hurst <ehurst@ieua.org>
Subject: RE: DYY letter revisions to clarify credits.

Liz,

Thank you for sitting down with me to discuss! The version attached to your email seems more clear based on my understanding of the changes from our conversations.

Katie Gienger, P.E.
Water Resources Manager
Ontario Municipal Utilities Company

Sent from my phone.

On Jul 26, 2018 4:55 PM, Elizabeth Hurst <ehurst@ieua.org> wrote:
Katie,
Thank you for meeting to discuss the DYY revisions this afternoon. Per our conversation, Option 1 has been edited to the following:

- Credits will be applied if a Party chooses voluntarily to purchase stored water by increasing groundwater pumping, based upon the following:
    - The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.E of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account.
    - In the event that stored water is purchased over a 5-year period as outlined in Section XIII.C.2 of the agreement the O&M, power, and treatment credits would also apply as defined in Section VI.6 of the Agreement

The full letter is attached. Please let me know if you have any additional tweaks, and if Ontario can now support the letter.
Thank you,
Liz

Elizabeth Hurst
Water Resources Planner

Inland Empire Utilities Agency
A MUNICIPAL WATER DISTRICT

"Water Smart - Thinking in Terms of Tomorrow"
6075 Kimball Ave / Chino, California 91708
Tel: 909-993-1634 / Fax:
EMail: ehurst@ieua.org Website: www.ieua.org

Connect with us

From: Elizabeth Hurst
Sent: Thursday, July 26, 2018 9:59 AM
To: P. E. Katie Gienger (kgienger@ontarioca.gov) <kgienger@ontarioca.gov>
Subject: DYY letter revisions to clarify credits.

Hi Katie,
Here are some thoughts about how to clarify the credits etc after our discussion on Monday and my follow up conversations with MWD. Look forward to discussing with you after the TAC meeting this afternoon!
Liz

Option 1:

- If a Party chooses ~~to~~ voluntarily to purchase stored water by increasing groundwater pumping, credits will be applied based upon the following:
    - The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.~~E~~6 of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account.
    - O&M, power, and treatment credits as outlined in Section VI.6 of the Agreement would also apply ~~i~~In the event that stored water ~~is in the account upon termination of the agreement, the parties will~~ purchase~~d the water~~ over a 5-year period, as outlined in XIII.C.2 of the agreement.

Option 2:

- If a Party chooses ~~to~~ voluntarily to purchase stored water by increasing groundwater pumping, credits will be applied based upon the following:
    - The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.E~~6~~ of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account. ~~In the event that stored water is in the account upon termination of the agreement, the parties will purchase the water over a 5-year period, as outlined in XIII.C.2 of the agreement.~~

EXHIBIT 8

From: Elizabeth Hurst <ehurst@ieua.org>
Sent: Wednesday, August 4, 2021 1:11 PM
To: Courtney Jones
Cc: Christopher T. Quach; Liza Muñoz; Ashley Alamo
Subject: RE: DYY Program Follow Up
Attachments: Ontario DYY Request.docx

Good morning Courtney,
Attached please find the information you requested. Please let us know if you have any additional questions on the program. Please note that the Agreement file is too large to send via email, but it is located on the Member Agency Portal under the DYY section.
Best,
Liz

Elizabeth Hurst
Senior Environmental Resource Planner
Inland Empire Utilities Agency
A MUNICIPAL WATER DISTRICT

From: Courtney Jones <CJJones@ontarioca.gov>
Sent: Monday, July 26, 2021 5:00 PM
To: Elizabeth Hurst <ehurst@ieua.org>
Cc: Christopher T. Quach <CQuach@ontarioca.gov>
Subject: DYY Program Follow Up

Hi Liz,

Thank you for taking the time to Chris and myself last week regarding the DYY Program and the voluntary withdrawal program per the Letter Agreement. We had a few follow up questions/requests for information as listed below following our discussion last week.

- How much did MWD recharge over the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
- Can you provide a copy of the approved Operations Plans for the parties who participated in the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
- Can you provide the baselines and the pumping reimbursement for the parties who participated in the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
- Can you provide a copy of the "Storage and Recovery Program Storage Agreement Between Chino Basin Watermaster, Inland Empire Utilities Agency, and Three Valleys Municipal Water District Regarding Implementation Of The Dry Year Yield Project" approved in 2004? This document is also referred to as the IEUA Storage Agreement by Watermaster.

Please let me know if you have any questions.

Thanks!

Courtney

Courtney Jones, P.E.
Water Resources and Regulatory Affairs Director
ONTARIO MUNICIPAL UTILITIES COMPANY
1425 S. Bon View Avenue
Ontario, CA 91761-4406
Phone: (909) 395-2640
E-mail: cjjones@ontarioca.gov

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

1. How much did MWD recharge over the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
    a. Please note that MWD does not anticipate recharging any water for fiscal year 2021/22.

	Month	Planned			Certified				
		Recharge	ASR	TAKES	Recharge	ASR	Losses	Basin Losses	TAKES***
FY 16/17	June	6,000	-	-	6,318.7	-	3.8	-	-
FY 17/18	July	6532	-	-	7,345.9	-	-	-	-
	August	6532	-	-	7,074.8	-	6.7	-	-
	September	6321	250	-	3,793.8	154.5	-	-	-
	October	2923	250	-	4,538.1	277.6	249.2	-	-
	November	1483	300	-	2,504.4	267.5	61.3	-	-
	December	1222	400	-	3,639.3	276.4	285.8	-	-
	January	1222	400	-	4,195.3	247.5	(86.0)	-	-
	February	1222	400	-	-	316.2	-	-	-
	March	1222	400	-	-	362.7	-	-	-
	April	1696	100	-	-	287.0	-	-	-
	May	4083	-	-	-	305.6	-	-	-
	June	6144	-	-	-	-	-	4.4	-
FY 18/19	May	-	-	-	-	-	-	-	-
	June	5000	350	-	4413.5	389.4	185.4		-
FY 19/20	July	6000	350	2548	4314.0	457.8	181.2	-	2421.1
	August	6000	350	2852	4803.9	434.2	201.8	-	2861.4
	September	5000	350	2206	2218.6	403.3	144.5	-	2695
	October	4000	350	1874	1842.5	277.3	105.8	-	2922.3
	November	2000	350	1280	1223.5	267.6	44.0	-	1995.0
	December	2000	350	971	1176.3	211.1	17.6	-	500
	January	-	-	844	491.7	0	7.4	-	-
	February	-	-	780	-	-	-	-	-
	March	-	-	1204	-	-	-	-	-
	April	-	-	1710	-	-	-	-	-
	May	-	-	1988	-	-	-	-	1500
	June	-	-	1743	-	-	-	32.2	2500
FY 20/21**	July	-	-		-	-	-	-	2700
	August	-	-		-	-	-	-	2500
	September	-	-		-	-	-	-	2500
	October***	-	-		-	-	-	-	5000
	November	-	-		-	-	-	-	0
	December	-	-		-	-	-	-	3500
	January	-	-		-	-	-	-	-
	February	-	-		-	-	-	-	-
	March	-	-		-	-	-	-	-
	April	-	-		-	-	-	-	2000
	May	-	-		-	-	-	-	2600
	June	-	-						2200
	Subtotal	*76,602*	*4,950*	*20,000*	*59,894.3*	*4,935.7*	*1,408.5*	*36.6*	*40,394.8*

DYY Account Balance (June 2017-Present)	
"PUTS"	
Recharged water	58,449.22
ASR injection	4,935.70
"TAKES"	
CVWD	37,894.80
Fontana Water Co.	2,500.00
TOTAL	***22,990.12***

2. Can you provide a copy of the approved Operations Plan for the parties who participated in the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
    a. Below is the approved Operations Plan for CVWD

CVWD	July	August	September	October	November	December	January	February	March	April	May	June	Total
FY19/20	2,548	2,852	2,206	1,874	1,280	971	844	780	1,204	1,710	1,988	1,743	20,000
FY20/21	2,700	2,500	2,500	5,000	-	3,500	-	-	-	1,000	2,600	2,700	22,500
FY21/22	2,700	2,100	2,300	2,100	1,900	1,900	650	650	700	1,000	1,000	1,000	18,000

b. Below is the approved Operations Plan for FWC

FWC	July	August	September	October	November	December	January	February	March	April	May	June	Total
FY19/20	-	-	-	-	-	-	-	-	-	-	-	-	-
FY20/21	-	-	-	2,500	-	-	-	-	-	-	-	-	2,500
FY21/22	1,000	1,000	1,000	1,000	-	-	150	150	150	150	200	200	5,000

3. Can you provide the baselines and the pumping reimbursement for the parties who participated in the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
   a. Below are the baselines for CVWD and FWC
   Please note that for the DYY the baseline is defined as the lesser of the 3-year average pumping or the sum of the party's share of the operating safe yield + the ag reallocation. Fontana was not an original member of the DYY.

CVWD	Baseline (AF)	FWC	Baseline (AF)
FY19/20	5,920.6	FY19/20	-
FY20/21	5,718.0	FY20/21	-
FY21/22	5,536.0	FY21/22	863.0

b. Below is the DYY credit for producing water from the DYY account.

	DYY Power & O&M Credit	
FY19/20	$	298.67
FY20/21	$	374.00
FY21/22	$	389.00

4. Can you provide a copy of the "Storage and Recovery Program Storage Agreement Between Chino Basin Watermaster, Inland Empire Utilities Agency, and Three Valleys Municipal Water District Regarding Implementation Of The Dry Year Yield Project" approved in 2004? This document is also referred to as the IEUA Storage Agreement by Watermaster.

   Please see attachment. This is the original program agreement. It is also posted on the Member Agency Portal under the DYY program.

EXHIBIT G

JEAN CIHIGOYENETCHE (State Bar No. 105227)
J. MARTIN CIHIGOYENETCHE (State Bar No. 293355)
JC LAW FIRM
5871 Pine Avenue, Suite 200
Chino Hills, CA 91709
(909) 941-3382
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Marty@thejclawfirm.com

Exempt from Filing fee Pursuant to Gov. Code § 6103

Attorneys for INLAND EMPIRE UTILITIES AGENCY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DISTRICT

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO; et al.,

Defendants.

CASE NO.: RCVRS 51010

Assigned for All Purposes to Honorable Stanford E. Reichert

DECLARATION OF ELIZABETH HURST IN SUPPORT OF INLAND EMPIRE UTILITIES AGENCY'S OPPOSITION TO CITY OF ONTARIO'S APPLICATION TO EXTEND TIME TO CHALLENGE WATERMASTER ASSESSMENT PACKAGE

DATE: April 8, 2022
TIME: 1:30 p.m.
DEPT: S35

JCLAW FIRM
5871 Pine Avenue, Suite 200
Chino, CA 91709
Tel: 909-941-3382 | Fax: 909-941-3384

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DECLARATION OF ELIZABETH HURST

I, ELIZABETH HURST, declare as follows:

1. I am employed as the Chino Basin Program Manager for the Inland Empire Utilities Agency ("IEUA"). Prior to being named Chino Basin Program Manager, I served as a Senior Environmental Resource Planner at IEUA. I have been employed as a member of the IEUA planning group since 2007. 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.

2. In my role as IEUA's Chino Basin Program Manager, and my prior role as Senior Environmental Resource Planner, I am personally familiar with the 2003 Groundwater Program Storage Funding Agreement between IEUA, Watermaster, Metropolitan Water District ("MWD"), and Three Valleys Municipal Water District ("TVMWD"), more commonly referred to as the Dry Year Yield Program ("DYYP"). I have personal knowledge of the administration of the DYYP and am an active participant therein, on behalf of IEUA.

3. Under the DYYP, MWD agreed to provide an investment of over $27,000,000 to Chino Basin parties for groundwater treatment and well facilities in exchange for the right of MWD to store water within the Basin.

4. The DYYP created a storage account in the Chino Basin of up to 100,000 acre-feet, which could be extracted at up to 33,000 acre-feet in a year at MWD's request. The DYYP storage account is effectively "owned" by MWD, as under the original DYYP terms, MWD had exclusive rights to make a call for water stored therein.

5. Under the DYYP, years are divided up into "put" years and "call" years. During a "put" year, at MWD's request, up to 25,000 acre-feet of water may be placed into the DYY account. During a "call" year, at MWD's request, up to 33,000 acre-feet of water may be extracted, so long as the amount extracted does not exceed the amount of water stored in the DYY account. The water extracted during a "call" year is used by Chino Basin parties with credits to offset pumping, operations, and maintenance costs, making the costs of this stored water equivalent to a direct MWD Tier 1 purchase.

// // //

JCLAW FIRM
5871 Pine Avenue, Suite 200
Chino, CA 91709
Tel: 909-941-3382 | Fax: 909-941-3384

6. The original DYYP Agreement has been altered since its inception, including a 2015 Amendment which increased the baseline purchase from MWD and delivery to the region to 40,000 acre-feet per year.

7. In 2017, after several years of drought conditions, MWD had excess State Water Project supply and requested additional water be stored in the DYYP storage account.

8. Over the period of June 2017 to June 2018, approximately 41,380 acre-feet of water was recharged into the DYYP storage account. This large increase in stored water in the DYYP account resulted in the DYYP Operating Committee exploring the potential for allowing voluntary withdrawal from the DYYP account. Voluntary withdrawal, if approved, would enable local parties, including the City of Ontario, to make full and efficient use of the water stored in the DYYP account on a voluntary basis, without MWD issuing a call. Voluntary withdrawal from the DYYP account at this time would also function to prevent water being stranded in the Chino Basin, which would result in a substantial cost increase to the local parties.

9. During this period, all parties, including IEUA and the City of Ontario, actively engaged in discussions to develop the methodology of the proposed system of voluntary withdrawals from the DYYP account. As the proposed system was deemed not to materially affect the rights of the DYYP parties and local agencies, a letter agreement executed by the DYYP signatories (IEUA, MWD, TVMWD, and Watermaster) incorporating the voluntary withdrawal system was the preferred method of implementing the system.

10. On June 26, 2018, as part of the open group discussion on how to best implement the proposed system of voluntary withdrawals from the DYYP account, I, and all other participating Chino Basin entities, received an email from an employee representative of the City of Ontario requesting clarification from IEUA on several aspects of the proposed voluntary withdrawal system. In this email, the City of Ontario asked whether voluntary withdrawals from the DYYP account under the proposed system would be subject to Watermaster assessments as typical production from the Chino Basin, or whether the proposed voluntary withdrawals would be exempt from Watermaster assessment as part of the storage and recovery program. In this email, the City of Ontario also opined that if the voluntary withdrawal system as proposed would materially affect the DYYP program, the proper implementation

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mechanism would be a formal amendment to the DYYP program documents. A true and correct copy of the email I received from the City of Ontario on June 26, 2018 is attached hereto as Exhibit "A" and incorporated herein by reference.

11. On June 27, 2018, after staff discussion in which I personally participated, IEUA responded to the City of Ontario's questions with an email directed to all Chino Basin entities participating in the group discussions. In this email, IEUA provided that as part of the DYYP, the proposed voluntary withdrawals from the MWD account would not be subject to typical Watermaster assessments as DYYP water is categorized as a storage and recovery program. IEUA's responsive email also provided that the proposed voluntary withdrawal system is completely voluntary, and as such, would not materially affect any party's rights under the DYYP. A true and correct copy of the IEUA email response of June 27, 2018 is attached hereto as Exhibit "B" and incorporated herein by reference.

12. Between the dates of June 26, 2018 and July 30, 2018 I held discussions with the City of Ontario's employee representative participating in the development of the voluntary withdrawal system. As a result of these discussions, the City of Ontario's representative sent me an email on July 30, 2018, which stated that the proposed letter agreement language was now much more clear to the City. I interpreted the City of Ontario's email as a statement in support of the proposed letter agreement language and responded with an email confirming the City's support of this proposed letter agreement. A true and correct copy of my July 30, 2018 email exchange with the City of Ontario is attached hereto as Exhibit "C" and incorporated herein by reference.

13. No objections to the proposed voluntary withdrawal system language from the City of Ontario, nor any other party, were received by IEUA after July 30, 2018. A letter agreement incorporating the proposed voluntary withdrawal system language was executed by IEUA, MWD, TVMWD, and Watermaster in February of 2019. The 2019 Letter Agreement, as executed was provided to all Chino Basin parties, including the City of Ontario, upon its execution. Until now, no party has ever objected to the terms of the 2019 Letter Agreement. A true and correct copy of the 2019 Letter Agreement is attached hereto as Exhibit "D" and incorporated herein by reference.

14. Pursuant to the terms of 2019 Letter Agreement, all DYYP parties, including the City of Ontario, were offered the opportunity to voluntarily withdraw from the DYYP account in production

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years 2019/20 and 2020/21. The City of Ontario declined to participate in the offered voluntary withdrawal program in each of these years. Based on information and belief, the City of Ontario declined the option to participate in this program in its sole discretion.

15. In production year 2020/21, two entities, Cucamonga Valley Water District and Fontana Water Company, elected to participate in the voluntary withdrawal system as set forth in the 2019 Letter Agreement, resulting in 23,000 acre-feet of water being produced from the DYYP account. This production was exempt from assessment by Watermaster in its most recent assessment package as a storage and recovery program, in accord with the established understanding of the 2019 Letter Agreement, and as explained to the City of Ontario in 2018.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on March 24, 2022, at Chino, California.

By: _____
ELIZABETH HURST

JCLAW FIRM
5871 Pine Avenue, Suite 200
Chino, CA 91709
Tel: 909-941-3382 | Fax: 909-941-3384

EXHIBIT A

From: Katie Gienger [mailto:KGienger@ontarioca.gov]
Sent: Tuesday, June 26, 2018 4:07 PM
To: Elizabeth Hurst <ehurst@ieua.org>; 'Dave Crosley' <dcrosley@cityofchino.org>; Coker, Amanda <acoker@cityofchino.org>; 'Mark Wiley' <mwiley@chinohills.org>; Craig, Ron <RONC@mbakerintl.com>; 'John Bosler' <JohnB@cvwdwater.com>; edd@cvwdwater.com; 'mkinsey@mvwd.org' <mkinsey@mvwd.org>; 'Van Jew' <vjew@mvwd.org>; 'Rosemary Hoerning' <rhoerning@ci.upland.ca.us>; Kevin Watson (kwatson@ci.upland.ca.us) <kwatson@ci.upland.ca.us>; 'Edgar Tellez Foster' <etellezfoster@cbwm.org>
Cc: Sylvie Lee <slee@ieua.org>
Subject: Re: Chino Basin DYY CUP Flexibility Agreement

Hello All,

After speaking with some of the other parties, additional questions have come up. In particular, how would this voluntary take affect imported water baselines (assuming that parties who elect to participate would then take less imported water, thus lowering their imported baseline, which affects their ability to perform in a call year)?

Also, how would the voluntary take affect groundwater pumping baselines, and how would the pumping be characterized at Watermaster? If a party elects to participate, the pumping would be above and beyond its current pumping baseline. Would this increase the baseline for the future, or be excluded from these calculations? Would pumping be subject to Watermaster assessments as typical production, or would it be categorized as part of the Storage & Recovery program?

Finally, as we've stated before, any modifications to the DYY program should be implemented through an amendment if they materially affect the program. This proposed change, with the number of variables at play, has the potential if not the assurance to materially affect the program. The illustrations provided at the last meeting were very helpful. However, these clarifications and details need to be memorialized in an amendment/agreement.

Sincerely,

Katie Gienger

From: Elizabeth Hurst <ehurst@ieua.org>
Sent: Tuesday, June 26, 2018 2:45 PM
To: 'Dave Crosley'; Coker, Amanda; 'Mark Wiley'; Craig, Ron; 'John Bosler'; edd@cvwdwater.com; 'mkinsey@mvwd.org'; 'Van Jew'; Katie Gienger; 'Rosemary Hoerning'; Kevin Watson (kwatson@ci.upland.ca.us); 'Edgar Tellez Foster'
Cc: Sylvie Lee
Subject: Chino Basin DYY CUP Flexibility Agreement

Dear All,
We have been discussing since early April about the revisions to the current MWD DYY program, to increase flexibility for the parties in the Chino Basin by allowing the region to choose when to buy-out the DYY account without waiting for an MWD "call year". This voluntary take would also qualify for O&M credit. For your reference, attached are the proposed letter agreement indicating the participation and credit for this voluntary option. Also attached are the scenarios presented at the May Water Manager's meeting, illustrating how % performance would be allocated during call years and would not result in an increased performance requirement beyond the existing DYY agreement (as outlined in Amendment #8).

During the meeting, the decisions provided by the agency are as follows:

Yes:	Chino, CVWD, Chino Hills, Monte Vista Water District
No answer:	Ontario and Upland

To ensure that the Chino Basin parties receive the benefit, we need to execute the letter agreement ASAP – or things can change. As a reminder, this request was made by the parties last Fall, and we finally negotiated the terms early this Spring. We would like to make sure we have consensus from all parties before we move forward with the letter agreement.

Please let us know your position by Monday July 9th at noon.

Thank you,
Liz

Elizabeth Hurst
Water Resources Planner

Inland Empire Utilities Agency
A MUNICIPAL WATER DISTRICT

"Water Smart - Thinking in Terms of Tomorrow"
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EXHIBIT B

From: Sylvie Lee [mailto:slee@ieua.org]
Sent: Wednesday, June 27, 2018 3:09 PM
To: 'Katie Gienger'; Scott Burton; 'Dave Crosley'; Coker, Amanda; 'Mark Wiley'; Craig, Ron; 'John Bosler'; edd@cvwdwater.com; 'mkinsey@mvwd.org'; 'Van Jew'; 'Rosemary Hoerning'; Kevin Watson (kwatson@ci.upland.ca.us); Tom O'Neil; Poulsen, Darron; Garibay, Raul
Cc: Elizabeth Hurst; pkavounas@cbwm.org; Edgar Tellez Foster; Ben Peralta; Justin Nakano; Chris Berch
Subject: RE: Chino Basin DYY CUP Flexibility Agreement

Dear Katie:

Thank you for the discussion. We hope that the following information provides the clarity.

1. Imported water baselines during call year for DYY performance will not be affected by the proposed changes with the voluntary take. The MWD DYY call amount for any year would be limited by the amount of water remaining in the DYY account, and each agency's production is limited to the amount in Exhibit H of Amendment 8 (see screenshot below). And, as illustrated in the examples we went through in May, the less water in the account, the lower the % share that each agency would have to perform. So, this provides a benefit to the participating agencies.

2. Based on conversations with CBWM, the DYY water is a storage and recovery program, and is not subject to assessments. Date for groundwater baseline and the additional performance pumping for DYY is maintained by CBWM. Please refer to previous assessment packages when the DYY performance was required for the above two statements.

3. The proposed staff modifications to provide O&M credit for voluntary pumping does not materially affect the program or its requirements. As it states, it is voluntary, and if an agency does not want to participate and withdraw water from the DYY account prior to a call year, they do not have to; however, during a call year parties will still need to perform per the contract as outlined in Amendment 8, until the account has been drawn down. This proposed language adds flexibility and ensures that the DYY credits are available for early extraction to add flexibility to the program. It was preferred by most of the DYY parties since it provides them the opportunity to perform when it is in their best interest, as opposed to when required by MWD. This modification, per legal counsels, falls under the jurisdiction of staff and does not need to go through the formal amendment process.

Darron, Raul and Ben: Apologize that we left you out of the conversation in the last email. Since we missed you also at the May Water Manager's meeting, please call Liz if would like additional information. Attached are the current proposed versions of the letter agreement from MWD which provides the flexibility to do voluntary takes and receive O&M credit.

As a reminder, we would like to finalize the letter agreement by July 9th.

Thank you.

Exhibit H

DESCRIPTION OF PROGRAM FACILITIES & OPERATING PARTIES

Ion Exchange Nitrate Removal Facility	Capacity (in AFY)	Funding Allocation	Project Name & Location
City of Pomona	2,000	$1,700,000.00	Arlon Exchange Nitrate Removal Facility Upgrade and Expansion Project Located @ First & San Antonio
Monte Vista County Water District	1,544	$1,428,200.00	Well 32 Located @ Palo Verde & Benson
City of Chino	1,159	$1,072,043.00	
City of Upland	3,001	$2,776,084.00	Plant No. 12 Ion Exchange Facility Located @ North & Mountain
City of Chino Hills	1,448	$1,338,938.00	Peirson Well (Well #30) Located @ Chino Hills Pkwy & Rolling
City of Ontario	1,544	$1,428,200.00	Well 52/Well 44 Located @ Cucamonga & 4th
Jurupa Community Services District	2,000	$1,494,000.00	Roger D. Teagarden Ion Exchange Water Treatment Plant, Located @ Etiwanda & 60 Freeway
IEUA Nine Line		$804,899.22	
Total Treatment Facilities Capacity:	12,696	$12,042,345.22	

Well Facilities	Capacity (in AFY)	Funding Allocation	Project Name & Location
Monte Vista County Water District	2,418	$1,472,987.00	Well 31, Located @ Monte Vista & Holden
Cucamonga County Water District	11,388	$9,595,441.00	Wells #36, 42, 2 Additional Wells 44 & 45 were Added in place of the Ion Exchange Well 43 submitted for replacement of 44 & 45, Located @ East Avenue & I-15, Cleveland & 7th, (8591 & 8673 San Bernardino Road, Rancho Cucamonga)
City of Ontario	8,530	$4,245,350.00	Wells #45, 46 & 47 Located @ Campus & E St, 6th St & Concours Ave
Total Well Capacity:	22,336	$14,713,982.00	
Total Extraction Capacity (Treatment + Well Capacity)	33,000	$26,756,325.22	Note: $1,243,074.78 used for environmental costs to bring total project cost to $27,999,400

Sylvie Lee P.E.
Manager of Planning & Environmental Resources

Inland Empire Utilities Agency
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EMail: slee@ieua.org Website: www.ieua.org

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EXHIBIT C

From: Elizabeth Hurst
Sent: Monday, July 30, 2018 4:14 PM
To: P. E. Katie Gienger (kgienger@ontarioca.gov) <kgienger@ontarioca.gov>
Subject: FW: DYY letter revisions to clarify credits.

Katie,
Great! Thank you for Ontario's support. We will move forward with the letter.
Best
Liz

From: Katie Gienger <KGienger@ontarioca.gov>
Sent: Monday, July 30, 2018 3:43 PM
To: Elizabeth Hurst <ehurst@ieua.org>
Subject: RE: DYY letter revisions to clarify credits.

Liz,

Thank you for sitting down with me to discuss! The version attached to your email seems more clear based on my understanding of the changes from our conversations.

Katie Gienger, P.E.
Water Resources Manager
Ontario Municipal Utilities Company

Sent from my phone.

On Jul 26, 2018 4:55 PM, Elizabeth Hurst <ehurst@ieua.org> wrote:
Katie,
Thank you for meeting to discuss the DYY revisions this afternoon. Per our conversation, Option 1 has been edited to the following:

- Credits will be applied if a Party chooses voluntarily to purchase stored water by increasing groundwater pumping, based upon the following:
    - The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.E of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account.
    - In the event that stored water is purchased over a 5-year period as outlined in Section XIII.C.2 of the agreement the O&M, power, and treatment credits would also apply as defined in Section VI.6 of the Agreement

The full letter is attached. Please let me know if you have any additional tweaks, and if Ontario can now support the letter.
Thank you,
Liz

Elizabeth Hurst
Water Resources Planner

Inland Empire Utilities Agency
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From: Elizabeth Hurst
Sent: Thursday, July 26, 2018 9:59 AM
To: P. E. Katie Gienger (kgienger@ontarioca.gov) <kgienger@ontarioca.gov>
Subject: DYY letter revisions to clarify credits.

Hi Katie,
Here are some thoughts about how to clarify the credits etc after our discussion on Monday and my follow up conversations with MWD. Look forward to discussing with you after the TAC meeting this afternoon!
Liz

Option 1:

- If a Party chooses ~~to~~ voluntarily to purchase stored water by increasing groundwater pumping, credits will be applied based upon the following:
    - The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.E~~6~~ of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account.
    - O&M, power, and treatment credits as outlined in Section VI.6 of the Agreement would also apply ~~i~~in the event that stored water ~~is in the account upon termination of the agreement, the parties will~~ purchase~~d the water~~ over a 5-year period, as outlined in XIII.C.2 of the agreement.

Option 2:

- ~~If a Party chooses to~~ voluntarily to purchase stored water by increasing groundwater pumping, credits will be applied based upon the following:
    - ~~The~~ first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.E~~6~~ of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account. ~~In the event that stored water is in the account upon termination of the agreement, the parties will purchase the water over a 5-year period, as outlined in XIII.C.2 of the agreement.~~

EXHIBIT D

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

February 5, 2019

Mr. Kirby Brill
Interim General Manager
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

Mr. Matthew Litchfield
General Manager
Three Valleys Municipal Water District
1021 E. Miramar Avenue
Claremont, CA 91711

Mr. Peter Kavounas
General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Dear Messrs. Brill, Litchfield, and Kavounas:

Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology

This letter documents agreement among Metropolitan, Inland Empire Utilities Agency (IEUA), Three Valleys Municipal Water District (Three Valleys), and the Chino Basin Watermaster (Watermaster) for storage of water above the initial 25,000 acre-feet cap in the Chino Basin Conjunctive Use Program (CUP). Normally, CUP water is stored in advance by Metropolitan for use during dry years and emergencies to reduce deliveries at the service connection. By letter dated June 23, 2017, Metropolitan called for up to 25,000 acre-feet to be stored in its CUP account through June 30, 2018. The parties stored about 39,000 acre-ft. Metropolitan appreciates the effort that the parties have shown to maximize storage during this period. This letter documents adjustments to the method of determining extraction from the account, in recognition of these efforts to store additional water.

By agreement of the parties, any water stored after June 1, 2017, would be purchased from the account by IEUA and Three Valleys when the parties pump over the groundwater baseline as defined in Exhibit G. A copy of Exhibit G is enclosed in this letter. This pumping could be the result of a response to a call for pumping made by Metropolitan or it could be through normal operational decisions made by the individual parties in a given year. Except during a call, the increase in pumping would be voluntary and performance would be measured by the parties that elect to increase their pumping. Call provisions would remain unchanged. The parties will receive O&M, power, and treatment credits and be billed for the water when the parties pump over the groundwater baseline as defined in Exhibit G. Voluntary purchases will be accomplished as follows:

- IEUA and Three Valleys will submit certifications for CUP storage as normal. These certified amounts will be added to the storage account.
- Credits will be applied if a Party chooses voluntarily to purchase stored water by increasing groundwater pumping. The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.E of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account.

If you concur with these provisions, please execute this letter signifying your concurrence and return to Metropolitan.

Sincerely,

Deven Upadhyay
Assistant General Manager/COO

MH:vh

Enclosure

CONCUR:

Kirby Brill
Interim General Manager

2/26/19
Date

Matthew Litchfield
General Manager

Date

Peter Kavounas
General Manager

Date

CONCUR:

Kirby Brill Interim General Manager	Date
Matthew Litchfield General Manager	2/25/19 Date
Peter Kavounas General Manager	Date

CONCUR:

Kirby Brill Interim General Manager	Date
Matthew Litchfield General Manager	Date
Peter Kavounas General Manager	2/19/19 Date

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 March 24, 2022 I served the following:

1. DECLARATON OF ELIZABETH HURST IN SUPPORT OF INLAND EMPIRE UTILITES AGENCY'S OPPOSITION TO CITY OF ONTARIO'S APPLICATION TO EXTEND TIME TO CHALLENGE WATERMASTER ASSESSMENT PACKAGE

/ 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 March 24, 2022 in Rancho Cucamonga, California.

By: Janine Wilson
Chino Basin Watermaster

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11248 S TURNER AVE
ONTARIO, CA 91761

JEFF PIERSON
2 HEXAM
IRVINE, CA 92603

ALLEN HUBSCH
LOEB & LOEB LLP
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EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO HONORABLE STANFORD E. REICHERT

DECLARATION OF SCOTT BURTON IN SUPPORT OF CITY OF ONTARIO'S COMBINED REPLY TO OPPOSITIONS

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

Hearing:
Date: April 22, 2022
Time: 1:30 p.m.
Dept.: S35

I, Scott Burton, declare as follows:

1. I have personal knowledge of the facts stated in this Declaration and, if called as a witness, could and would testify competently to those facts.

2. I am the Utilities General Manager at the City of Ontario ("Ontario") and have held that position since January 2012.

3. I make this Declaration in support of Ontario's Combined Reply to the Oppositions of Watermaster, Fontana Water Company and Cucamonga Valley Water District, and Inland Empire Utilities Agency to the Application for an Order to Extend Time Under Judgment, Paragraph 31(c) and Challenge of Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment Package.

4. On November 1, 2021, Ontario sent a letter to Mr. Kavounas, Watermaster General Manager, that outlined questions and comments to the draft Fiscal Year 2021/2022 Assessment Package. Ontario requested that the Chino Basin Watermaster ("Watermaster") explain the basis for exempting 23,000 acre-feet (AF) of water produced from the Metropolitan Water District's ("MWD") Chino Basin Conjunctive Use Program ("CUP"), also known as the Dry Year Yield Storage and Recovery Program ("DYY Program"), as identified in the draft Fiscal Year 2021/2022 Assessment Package, from the Watermaster assessment and the Desalter Replenishment Obligation ("DRO") assessment. Under the 1978 Chino Basin Judgment ("Judgment"), this production should have been assessed. The Watermaster waived assessments for two Parties of the Chino Groundwater Basin, the Cucamonga Valley Water District ("CVWD") and the Fontana Water Company ("FWC"), inconsistent with the Judgement. A true and correct copy of the letter dated November 1, 2021, is attached hereto as Exhibit 1 and incorporated herein by reference.

5. On November 18, 2021, the Watermaster presented a staff report to the Watermaster Board in response to Ontario's November 1, 2021 letter. The Watermaster Board directed Watermaster Staff and legal counsel to evaluate the concerns raised by Ontario surrounding the DYY Program and related applicability to Watermaster assessments. (See Request for Judicial Notice ("RJN"), Ex. 61.)

6. On November 18, 2021, the Watermaster Board approved the Fiscal Year 2021/2022 Assessment Package. Ontario understood that resolution of the questions and comments raised regarding the DYY Program would not affect the ability to retroactively address the Fiscal Year 2021-2022 Assessment Package. The Watermaster staff report also confirmed that the assessment package could always be changed retroactively if warranted. (RJN, Ex. 61 at p. 6.)

7. In an effort to exhaust all administrative remedies, on January 5, 2022, the Watermaster, Ontario, CVWD, and FWC met to discuss the DYY Program issues and began good faith negotiations.

8. On January 24, 2022, Ontario, CVWD, and FWC met to discuss a draft settlement term sheet and to continue good faith negotiations. During this meeting, Ontario mentioned that if this issue needed to be raised in Court, conflict waivers might be necessary. No objections or agreements were raised concerning such waivers and Ontario continued to actively work with the Parties and Watermaster to reach a resolution.

9. Also on January 24, 2022, Ontario sent a letter to Mr. Kavounas, the Watermaster General Manager, detailing Ontario's concerns with Watermaster's administration of the DYY Program. A true and correct copy of the letter dated January 24, 2022, is attached hereto as Exhibit 2 and incorporated herein by reference.

10. On January 27, 2022, the Watermaster presented a staff report to the Watermaster Board in response to Ontario's concerns that were reiterated in the January 24, 2022 letter and in response to the Watermaster Board's direction on November 18, 2021. (RJN, Ex. 42.) However, when asked, Watermaster's general counsel stated that he was "not prepared to provide a legal opinion in this moment." It was understood by Ontario that in order to comply with the Watermaster Board's direction on November 18, 2021, a report with legal counsel's opinion would be forthcoming.

11. On January 27, 2022, Ontario sent a request to FWC for a conflict-of-interest waiver. On the same day, Ontario started looking at other options for legal counsel. A true and correct copy of the January 27, 2022 email is attached hereto as Exhibit 3 and incorporated herein by reference.

12. On February 3, 2022, Ontario sent a revised draft settlement terms sheet to CVWD and FWC that addressed comments received during the January 24, 2022 meeting. Ontario circulated the revised draft seeking additional input and discussion on issues raised by CVW and FWC.

13. On February 11, 2022, Ontario requested that the Watermaster general counsel approve an extension to the 90-day period if determined necessary by Watermaster. Although the Watermaster initially indicated that it might stipulate to an extension, it ultimately refused. On the same day, FWC informed Ontario that it would not grant a conflict-of-interest waiver. When Ontario inquired about the revised draft settlement terms sheet, FWC said that they were looking at it and would talk to CVWD.

14. On February 14, 2022, Ontario began actively pursuing other legal representation on the specific issues involved in this legal challenge.

15. On February 15, 2022, Ontario was informed that the Watermaster Board officers convened a meeting at 5:00 PM on February 14 and if no other Board direction was received, an email would be sent to Ontario. This email was never received by Ontario. At the time of this meeting, the Board officers include James Curatalo, Jeff Pierson, and Bob Kuhn. Mr. Kuhn represents TVMWD, which subsequently joined Watermaster's opposition to Ontario's current Application. Similarly, James Curatolo represents CVWD, who also opposes Ontario's Application. Neither the Judgment nor any subsequent Court order confers any special duties or responsibilities to Board officers, such as receiving legal advice and providing direction independent of a full Board action.

16. On February 16, 2022, Ontario contacted Attorney Charisse Smith, who is on contract with the City of Ontario, to prepare and file Ontario's February 17, 2022 Application.[1] Ms. Smith does not specialize in water law and was retained for the limited purpose to assist with

[1] The "February 17, 2022 Application" means the City of Ontario Application For an Order to Extend Time Under Judgment, Paragraph 31(c) to Challenge Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment Package. If Such Request is Denied, this Filing is the Challenge filed in this action on February 17, 2022.

the filing of the extension request pending Ontario's retention of new water law counsel to represent it on the Watermaster's action on November on November 18, 2021.

17. From February 23, 2022 to February 28, 2022, Ontario worked diligently to enter into a professional services agreement for legal representation with a new attorney. During this time, the prospective attorney informed Ontario that he and the entire water law group were moving to a different law firm. It was conveyed to Ontario that this should not be an issue.

18. On March 4, 2022, the prospective attorney informed Ontario that due to a conflict of interest at the new law firm, he would not be able to represent Ontario.

19. On March 7, 2022, Ontario reinitiated the pursuit of legal representation by contacting multiple attorneys.

20. On March 15, 2022, Ontario entered into an engagement agreement with Attorney Elizabeth Ewens at Stoel Rives LLP for legal representation with regard to the Watermaster's action on November 18, 2021.

21. Ontario is not aware of any other storage and recovery program applications pending Watermaster review/approval. Even if there were, such programs are generally prepared over years rather than months,

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on this 26th day of May 2022, at Ontario, California.

Scott Burton

EXHIBIT 1

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CITY MANAGER

November 1, 2021

Peter Kavounas, General Manager
Chino Basin Watermaster
9641 San Bernardino Road
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Email: pkavounas@cbwm.org

Re: Questions and Comments on the Draft Fiscal Year 2021-2022 Assessment Package

Dear Peter:

The City of Ontario (Ontario) appreciates the opportunity to provide comments and submit questions on the draft Fiscal Year 2021-2022 Assessment Package.

The draft Fiscal Year 2021-2022 Assessment Package identifies a total of 23,000 AF of groundwater production produced from the storage account established for the Metropolitan Water District's (MWD) Chino Basin Conjunctive Use Program (CUP). The Chino Basin CUP and related Chino Basin Watermaster (Watermaster) storage agreements were approved through the Watermaster process in 2003 and 2004. The most recent Amendment No. 8 to the Chino Basin CUP is dated January 23, 2015 and included changes to the Exhibit G Operating Party Performance Criteria. The Operating Party Performance Criteria establishes, among other things, qualifying production as the measurement of a reduction to imported water deliveries and a corresponding replacement with the Chino Basin groundwater stored under this program. Ontario's understanding is that the storage and withdrawal of supplemental water under the Chino Basin CUP can only be done pursuant to a properly approved written agreement with Watermaster and shall not have an adverse impact on other produces.

Ontario requests that Watermaster explain the basis for exempting water produced from MWD's CUP, as identified in the draft Fiscal Year 2021-2022 Assessment Package, from the Watermaster assessment and the Desalter Replenishment Obligation (DRO) assessment. The exemption appears to be based, at least in part, on a March 20, 2019 letter agreement (2019 Letter) from the MWD and signed by Watermaster, Inland Empire Utilities Agency and Three

Valleys Municipal Water District with the subject line of "Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology". Specifically, Ontario would like responses to the following:

1. How did Watermaster evaluate the impacts of this significant change in the recovery of water originally stored under the Chino Basin CUP?
2. Explain and illustrate how the Exhibit G Performance Criteria is being met.
3. The 2019 Letter does not address the topic of Watermaster Assessments. The mechanics of this transaction appear to be more of a stored water purchase & transfer between MWD and individual Parties producing the water. Why is the production of this water not subject to the same assessments as other production by individual Parties?
4. When evaluating the 2019 Letter and the proposed changes, describe the Watermaster approval process. The contemplated changes in the 2019 Letter did not go through the Pools, Advisory Committee, or the Board. What was the basis for forgoing this process?
5. How was it determined that agencies who are not signatories to the Chino Basin CUP approved by Watermaster are allowed to participate in the recovery of water stored under this program?
6. How was it determined that broad based benefit was still being achieved?

The 2019 Letter fundamentally changed the recovery side of this Watermaster approved storage and recovery program without obtaining an approved written agreement through the Watermaster process. Additionally, the implications of these changes were not represented and/or evaluated to determine the impacts on individual parties.

Ontario appreciates the opportunity to provide comments on the draft Fiscal Year 2021-2022 Assessment Package and looks forward to working collaboratively with Watermaster and the various stakeholders towards a resolution of these concerns.

Sincerely,

Scott Burton, P.E.
Utilities General Manager

CC: Appropriative Pool Parties

EXHIBIT 2

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SCOTT OCHOA
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January 24, 2022

Peter Kavounas, General Manager
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Email: pkavounas@cbwm.org

SENT VIA EMAIL AND CERTIFIED US MAIL

Re: Dry Year Yield Program

Dear Peter,

The City of Ontario (Ontario) appreciates the recent Watermaster Board direction to staff and legal counsel to evaluate the concerns raised by Ontario surrounding the Dry Year Yield Storage and Recovery Program (DYYP) and related applicability to Watermaster assessments. In awaiting this legal report back to the Board, Ontario remains concerned that Watermaster is administering an unauthorized change to the DYYP that is inconsistent with the storage agreement approved by Watermaster and ordered by the Court. This has resulted in a material change to the DYYP, adversely impacts Ontario, and has the potential to further impact Parties to the Judgment in the future. The subject changes are identified in a March 20, 2019 letter agreement (2019 Letter) signed by the Metropolitan Water District (MWD), Watermaster's General Manager, and two MWD member agencies on the Watermaster Board. This was done independent of any formal Watermaster Pool/Advisory/Board approval process, which is unacceptable. The purpose of this letter is to expand on the significance of this issue and provide Watermaster with the opportunity to correct the matter as soon as possible.

Background

Ontario submitted comments and questions on the Draft Fiscal Year 2021-2022 Assessment Package to the Watermaster General Manager in a letter dated November 1, 2021. Ontario's letter discussed the 2019 Letter with the subject line of "Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology." While Ontario appreciates Watermaster's Staff Reports released on November 16, 2021

and January 7, 2022 regarding this matter, Ontario's concerns remain foundationally in the execution of the 2019 Letter, how it fundamentally changed the recovery aspect of the DYYP, how it is not consistent with the 2004 Court-approved agreements and that it did not go through the formal Watermaster approval process similar to other material DYYP amendments.

The DYYP consists of three sets of agreements ordered by the Court: The 2003 Funding Agreement, the 2004 Storage Agreement, and the Local Agency Agreements such as the one executed by the City of Ontario. The intent of the program is to provide greater water supply reliability by storing water in advance of dry periods and pumping the stored water in lieu of receiving imported water during droughts. The Court found that the DYYP as described in the Funding Agreement provides broad mutual benefit to the parties to the Judgment.

The Court-ordered Funding Agreement indicates that "the specific location and operation of the facilities necessary to accomplish this commitment must still be analyzed by Watermaster..." and "This approval will take the form of Watermaster approval of the Local Agency Agreements..." Consistent with the Funding Agreement, the Local Agency Agreements define each agencies' facilities and annual recovery capacity, including performance targets of an imported water shift and program water extraction for each participating agency.

The Local Agency Agreements are the foundation of the storage and recovery program storage application, subsequent analysis, approvals, and ultimately the Court-approved Storage Agreement. As stated in the 2003 Court Order, "until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application ... the storage and recovery program cannot be undertaken." Additionally, per the Watermaster Storage Agreement, "Any modification of facilities that is materially different than those contemplated by the Local Agency Agreements will require the filing of a new application." The intent of the performance criteria per Amendment No. 8 to the Groundwater Storage Program Funding Agreement, Exhibit G is "to reduce imported water deliveries to the Operating Parties and replace it with stored Chino Basin groundwater..." (underline added for emphasis). Recovery of water under the 2019 Letter is inconsistent with the Local Agency Agreements and is therefore inconsistent with the Court Orders and should be determined as impermissible by Watermaster as an arm of the Court. In addition, it seems to remove the DYYP performance criteria that historically served as the basis for Watermaster to waive assessments.

During the initial project development there were amendments to the Funding Agreement that pertained to the completion timing of facilities and changes in sources of funds. The only material change to the DYYP occurred with the 2015 Amendment No. 8 to the Funding Agreement, which was universally approved through the Watermaster process after the Operating Parties approved amendments to the Local Agency Agreements with the same changes to the Exhibit G Performance Criteria. While Amendment No. 8 made material changes to the program, they were nowhere near as significant as those found in the 2019 Letter which changed the amount of water each agency was able to recover, as well as when and how that water was recovered. The 2019 Letter was not accompanied by corresponding changes to the Local Agency Agreements, was not approved through the Watermaster process, and also allowed Parties without Local Agency Agreements to participate in the DYYP.

Ontario's Concerns

Watermaster is allowing the recovery of water from the DYYP storage account that is not consistent with the storage agreement approved via the Watermaster process and ordered by the Court in 2004. The 2019 Letter fundamentally changed the recovery side of this Watermaster approved storage and recovery program. The 2019 Letter changed the application of the Exhibit G Performance Criteria and allowed for water to be recovered outside of the Local Agency Agreements (in terms of agency, location, and quantity) without a corresponding shift off of imported water. In effect, this is production of supplemental water from storage and must be treated as such under the provisions of the Judgement and Peace Agreements.

Regarding assessments, the Judgment requires virtually all production to be assessed in order to pay for Watermaster activities in a shared fashion based on beneficial use of the Basin. Waiving assessments on some production inherently places a greater expense on the remaining production that is factored into assessments. Court approval of the Funding Agreement and Storage Agreement (and subsequent Local Agency Agreements) does not explicitly define how assessments shall be handled, but Watermaster has historically waived assessments (or assessed during in-lieu put) on water produced under the approved DYYP without objection. What is different now is that the 2019 Letter fundamentally changed the DYYP as approved by the Court, as approved by the Parties through the Local Agency Agreements, and as approved through the Watermaster process. Table 1 below shows the program as it was approved by the Court and as it has been modified by the 2019 Letter. Watermaster is not authorized by the Court or otherwise to allow DYYP water to be recovered in this manner or to exempt this production from pumping assessments. Watermaster must administer assessments consistent with the Judgment and Court Orders.

Table 1 - DYY Performance Criteria 2004 vs Draft FY 2021/22 Asseessment Package

	2004 - Original DYY Agreement		FY 2021/22 Assessment Package	
Appropriator	Req. IW Shift (AF)	Req. DYY GW Take (AF)	Req. IW Shift (AF)	DYY Claim (AF)
City of Chino	1,159	1,159	0	0
City of Chino Hills	1,448	1,448	0	0
City of Ontario	8,076	8,076	0	0
City of Pomona	2,000	2,000	0	0
City of Upland	3,001	3,001	0	0
Cucamonga Valley Water District	11,353	11,353	0	20,500
Fontana Water Company	No Local Agency Agreement		0	2,500
Jurupa Community Services District	2,000	2,000	0	0
Monte Vista Water District	3,963	3,963	0	0
Total	33,000	33,000	0	23,000

Notes:
1. Operating Plan Varies year to year
2. Voluntary Claim is any pumping above Groundwater Baseline and below Physical Production

Additionally, the 2019 Letter impacted the broad-based benefit of the program, which is to provide greater water supply reliability by storing water in advance of dry periods and pumping the stored water in lieu of receiving imported water during droughts. Considering the current drought predicament, a participating agency's ability to access imported water has been greatly impacted by allowing the DYYP storage account to be drained outside of its originally intended purpose. This impact is further illustrated by MWD's urgent introduction in January 2022 of two newly proposed imported water delivery deferment programs that similarly seek to accomplish the original intent of the DYYP, a corresponding shift from imported water to groundwater.

Conclusion

The 2019 Letter fundamentally changed the recovery side of this Court-ordered and Watermaster approved storage and recovery program without the necessary approvals. The implications of these changes were not represented and/or evaluated to determine the material physical impacts on individual parties and the Chino Basin. Watermaster signed off on a material change to the recovery of water under the DYYP which is inconsistent with the Court Order and without formal review and approval through the Watermaster process. This sets an alarming precedence for future Watermaster lead endeavors and infringes upon Ontario's rights and protections under the Judgment and related Court Orders that Watermaster is charged with administering. Ontario is requesting that Watermaster cease any further implementation of the 2019 Letter and amend assessment packages as applicable.

Ontario looks forward to working collaboratively with Watermaster and impacted parties towards a resolution of these concerns.

Sincerely,

Courtney Jones

Courtney Jones, P.E.
Water Resources and Regulatory Affairs Director

CC: Chino Basin Watermaster Board
Eduardo Espinoza, Appropriative Pool Chair
Brian Geye, Non-Agricultural Pool Chair
Bob Feenstra, Agricultural Pool Chair

EXHIBIT 3

From: Scott Burton
Sent: Thursday, January 27, 2022 5:33 PM
To: Josh M. Swift (jmswift@fontanawater.com) <jmswift@fontanawater.com>; rjdiprimio@sgvwater.com
Subject: Request for Conflict Waiver

Good afternoon Robert and Josh,

As you know, Ontario has raised a concern with Watermaster about its handling of the DYY program and related impact on assessments (see attached letter for specifics).

Ontario recently met with Josh and CVWD about potential remedies that would keep the issue out of Watermaster Court. I appreciated the opportunity to meet and discuss approaches to a settlement of some sort.

Typically Fred Fudacz represents Ontario on Watermaster activities but in this case he has a conflict because it involves FWC's recent participation in the DYY program and a potential financial impact, albeit relatively small. Hopefully it is not necessary to seek Court clarification but Ontario needs to start preparing for that possibility. I'm requesting that your agency consider the matter and let me know if you are willing to provide a conflict waiver. As mentioned to Josh, Ontario is willing to provide a conflict waiver for BB&K to be able to represent CVWD if they so choose.

Please consider the request and let me know as soon as possible. Also I'm happy to discuss.

EXHIBIT I

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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.

Defendants

No. RCV 51010[1]

RESTATED JUDGMENT

[1] 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.

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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. Defendants	No. RCV 51010[2] JUDGMENT

I. INTRODUCTION

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

[2] 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.

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

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

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

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

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

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

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

(d) Basin Water –- Ground water 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 herein. Said term does not include Stored Water.

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

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

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

(h) Ground Water –- Water beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table.

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

(j) Minimal Producer –- Any producer whose production does not exceed **ten** acre-feet per year. [3]

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

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

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

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

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

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

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

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

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

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

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

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

[3] Order dated September 27, 2001.

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

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

(x) Safe Yield –- 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.

(y) SBVMWD –- San Bernardino Valley Municipal Water District.

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

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

(bb) Supplemental Water –- Includes both water imported to Chino Basin from outside Chino Basin Watershed, and reclaimed water.

(cc) WMWD –-Defendant Western Municipal Water District of Riverside County.

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

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

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

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

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

"E" – Table Showing Appropriators and Their Rights.

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

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

"H" -- Appropriative Pool Pooling Plan.

"I" -- Engineering Appendix.

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

"K" -- Legal Description of Chino Basin.

II. DECLARATION OF RIGHTS

A. HYDROLOGY

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

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

B. WATER RIGHTS IN SAFE YIELD

8. Overlying Rights. 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."***[4]

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

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

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

[4] Order dated September 28, 2000 and Order dated April 19, 2001 further modified by Order dated December 21, 2007.

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

C. RIGHTS TO AVAILABLE GROUND WATER STORAGE CAPACITY

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

12. Utilization of Available Ground Water Capacity. Any person or public entity, whether a party to this action or not, may make reasonable beneficial use of the available ground water storage capacity of Chino Basin for storage of supplemental water; provided that no such use shall be made except pursuant to written agreement with Watermaster, as authorized by Paragraph 28. In the allocation of such 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.

III. INJUNCTION

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

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

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

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

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

IV. CONTINUING JURISDICTION

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

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

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

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

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

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

V. WATERMASTER

A. APPOINTMENT

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

B. POWERS AND DUTIES

17. Powers and Duties. Subject to the continuing supervision and control of the Court, Watermaster shall have and may exercise the express powers, and shall 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.

18. Rules and Regulations.[5]

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

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

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

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

[5] Order dated March 31, 1999.

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

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

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

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

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

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

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

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

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

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

30. Annual Administrative Budget. Watermaster shall submit to Advisory Committee an administrative budget and recommendation for each fiscal year on or before March 1. The Advisory Committee shall review and submit said budget and their recommendations to Watermaster on or before April 1, following. Watermaster shall hold a public hearing on said budget at its April quarterly meeting and adopt the annual administrative budget which shall include the administrative items for each pool committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to make a proper allocation of the expense 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 budgeted items may thereafter be made by Watermaster in the exercise of powers herein granted, as a matter of course. Any budget transfer in excess of 20% of a budget category during any budget year or modification of such administrative budget during any year shall be first submitted to the Advisory Committee for review and recommendation.

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

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

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

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

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

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

C. ADVISORY AND POOL COMMITTEES

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

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

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

(a) Overlying Agricultural Pool 20,

(b) Overlying Non-Agricultural Pool 5, and

(c) Appropriative Pool 20.

[6] Order dated September 18, 1996.

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

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

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

37. Organization.

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

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

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

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

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

(e) Adjournments. Any meeting of any Pool or Advisory Committee 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.

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

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

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

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

[2] Committee Review. In the event Watermaster proposes to take discretionary action, other than approval or disapproval of a Pool Committee action or recommendation properly transmitted, or execute any agreement not theretofore within the scope of an Advisory Committee recommendation, 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. The cost of such counsel and expert assistance shall be Watermaster expense to be allocated to the affected pool or pools.

VI. PHYSICAL SOLUTION

A. GENERAL

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

40. Need for Flexibility. It is essential that this Physical solution 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. To that end, the Court's retained jurisdiction will be utilized, where appropriate, to supplement the discretion herein granted to the Watermaster.

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

be subject to procedures established by and administered through Watermaster with the advice and assistance of the Advisory and Pool Committees composed of the affected producers. Both the quantity and quality of said water resources may thereby be preserved and the beneficial utilization of the Basin maximized.

42. General Pattern of Operations. It is contemplated that the rights herein decreed will be divided into three (3) operating pools for purposes of Watermaster administration. 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 the extent that pumping exceeds the share of the Safe Yield assigned to the Overlying Pools, or the Operating Safe Yield in the case of the Appropriative Pool, each pool will provide funds to enable Watermaster to replace such overproduction. The method of assessment in each pool shall be as set forth in the applicable pooling plan.

B. POOLING

43. Multiple Pools Established. There are hereby established three (3) pools for Watermaster administration of, and for the allocation of responsibility for, and payment of, costs of replenishment water and other aspects of this Physical Solution.

(a) Overlying (Agricultural) Pool. The first pool shall consist of the State of California and all overlying producers who produce water for other than industrial or commercial purposes. The initial members of the pool are listed in Exhibit “C”.

(b) Overlying (Non-agricultural) Pool The second pool shall consist of overlying producers who produce water for industrial or commercial purposes. The initial members of this pool are listed in Exhibit “D”.

(c) Appropriative Pool. A third and separate pool shall consist of owners of appropriative rights. The initial members of the pool are listed in Exhibit “E”.

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

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

Pool	Allocation
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.

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

45. Annual Replenishment. Watermaster shall levy and collect assessments in each year, pursuant to the respective pooling plans, in amounts sufficient to purchase replenishment water to replace production by any pool during the preceding year which exceeds that pool's allocated share of Safe Yield in the case of the overlying pools, or Operating Safe Yield in the case of the Appropriative Pool. 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.

46. Initial Pooling Plans. The initial pooling plans, which are hereby adopted, are set forth in Exhibits "F", "G" and "H", respectively. Unless and until modified by amendment of the judgment pursuant to the Court's continuing jurisdiction, each such plan shall control operation of the subject pool.

C. REPORTS AND ACCOUNTING

47. Production Reports. Each party or responsible party shall file periodically with Watermaster, pursuant to Watermaster rules, a report on a form to be prescribed by Watermaster showing the total production of such party during the preceding reportage period, and such additional information as Watermaster may require, including any information specified by the affected Pool Committee.

48. Watermaster Report and Accounting. **Watermaster's Annual Report shall be filed by *January 31* of each year. The Report shall apply to the preceding fiscal years' operation. The Report shall contain details as to operation of the Pools. A certified audit of assessments and expenditures pursuant to this Physical Solution, and a review of Watermaster activity.** [7]

D. REPLENISHMENT

49. Sources of Supplemental Water. Supplemental water may be obtained by Watermaster from any available source. Watermaster shall seek to obtain the best available quality of supplemental water at the most reasonable cost for recharge in the Basin. To the extent that costs of replenishment water may vary between pools, each pool shall be liable only for the costs attributable to its required replenishment. Available sources may include, but are not limited to:

(a) Reclaimed Water. There exist a series of agreements generally denominated the Regional Waste Water Agreements between IEUA and owners of the major municipal sewer

[7] Order dated March 31, 1999.

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

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

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

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

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

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

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

E. REVENUES

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

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

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

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

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

(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. 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. 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 Pool Committee, or pursuant to written order of the Court.

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

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

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

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

56. Accumulation of Replenishment Water Assessment Proceeds. In order to minimize fluctuation in assessment and to give Watermaster flexibility in 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.

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

VII. MISCELLANEOUS PROVISIONS

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

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

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

61. Loss of Rights. Loss, whether by abandonment, forfeiture or otherwise, of any right herein adjudicated shall be accomplished only (1) by a written election by the owner of the right filed with Watermaster, or (2) by order of the Court upon noticed motion and after hearing.

62. Scope of Judgment. Nothing in this Judgment shall be deemed to preclude or limit any party in the assertion against a neighboring party of any cause of action now existing or hereafter arising based upon injury, damage or depletion of water supply available to such party, proximately caused by nearby pumping which constitutes an unreasonable interference with such complaining party's ability to extract ground water.

63. Judgment Binding on Successors. This Judgment and all provisions thereof are applicable to and binding upon not only the parties to this action, but also upon their respective heirs, executors, administrators, successors, assigns, lessees and licensees and upon the agents, employees and attorneys in fact of all such persons.

64. Costs. No party shall recover any costs in this proceeding from any other party.

Dated: January 1, 1978

Howard B. Weiner

Howard B. Weiner

N

0 1 2 3 4 Kilometers

0 1 2 3 Miles

San Gabriel Mountains

HIGHLAND AVE

BASE LINE ST

FOOTHILL BLVD

RIVERSIDE AVE

MERRILL AVE

15

215

10

HOLT BLVD

Ontario Int'l Airport

MISSION BLVD

RESERVOIR ST

CENTRAL AVE

EUCLID AVE

ARCHIBALD AVE

PHILADELPHIA ST

60

RIVERSIDE DR

EDISON AVE

71

Chino

Puente Hills

Chino Hills

San Bernardino County

Orange County

Los Angeles County

San Bernardino County

Riverside County

Jurupa Hills

JURUPA RD

PEDLEY RD

LIMONITE AVE

Santa Ana River

La Sierra Hills

91

Exhibit A

Location Map of Chino Basin

Adjudicated Boundary of the Chino Basin

Map prepared by:

WE WILDERMUTH ENVIRONMENTAL, INC.

N

0 1 2 3 4 Kilometers

0 1 2 3 Miles

San Gabriel Mountains

San Antonio Dam

Claremont Basin

Cucamonga Basin

Indian Hill Fault

Red Hill Fault

Pomona Basin

San Jose Fault

Chino

Spadra Basin

Ontario Int'l Airport

Basin

Rialto-Colton Basin

Riverside Basins

Rialto-Colton Fault

San Jacinto Fault

Barrier J

Lytle Creek

Cajon Creek

Deer Creek

Day Creek

East San Sevaine Creek

Etiwanda Creek

San Antonio Creek

FOOTHILL BLVD

RESERVOIR ST

CENTRAL AVE

EUCLID AVE

MISSION BLVD

EDISON AVE

JURUPA RD

LIMONITE AVE

ARCHIBALD AVE

Cucamonga Creek

Puente Hills

Chino Hills

Central Avenue Fault

Chino Fault

Chino Creek

Prado Flood Control Basin

Prado Dam

Temescal Basin

La Sierra Hills

Santa Ana River

10

15

60

71

91

215

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:
WILDERMUTH ENVIRONMENTAL, INC.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Abacherli, Dairy, Inc.

Abacherli, Frank

Abacherli, Shirley

Abbona, Anna

Abbona, James

Abbona, Jim

Abbona, Mary

Agliani, Amelia H.

Agman, Inc.

Aguerre, Louis B.

Ahmanson Trust Co.

Akiyama, Shizuye

Akiyama, Tomoo

Akkerman, Dave

Albers, J.N.

Albers, Nellie

Alewyn, Jake J.

Alewyn, Normalee

Alger, Mary D.

Alger, Raymond

Allen, Ben F.

Allen, Jane F.

Alta-Dena Dairy

Anderson Farms

Anguiano, Sarah L.S.

Anker, Gus

Barnhill, Paul

Aphessetche, Xavier

Arena Mutual Water Assn.

Armstrong Nurseries, Inc.

Arretche, Frank

Arretche, Jean Pierre

Arvidson, Clarence F.

Arvidson, Florence

Ashley, George W.

Ashley, Pearl E.

Atlas Farms

Atlas Ornamental Iron Works, Inc.

Aukeman, Carol

Aukeman, Lewis

Ayers, Kenneth C., aka

Kelley Ayers

Bachoc, Raymond

Baldwin, Edgar A.

Baldwin, Lester

Banbury, Carolyn

Bangma Dairy

Bangma, Arthur

Bangma, Ida

Bangma, Martin

Bangma, Sam

Barba, Anthony B.

Barba, Frank

Barcellos, Joseph

Barnhill, Maurine W.

Boersma, Angie

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Bartel, Dale
Bartel, Ursula
Bartel, Willard
Barthelemy, Henry
Barthelemy, Roland
Bassler, Donald V., M.D.
Bates, Lowell R.
Bates, Mildred L.
Beahm, James W.
Beahm, Joan M.
Bekendam, Hank
Bekendam, Pete
Bello, Eugene
Bello, Olga
Beltman, Evelyn
Beltman, Tony
Bergquist Properties, Inc.
Bevacqua, Joel A.
Bevacqua, Marie B.
Bidart, Bernard
Bidart, Michael J.
Binnell, Wesley
Black, Patricia E.
Black, Victor
Bodger, John & Sons Co.
Boer, Adrian
Boersma and Wind Dairy
Borges, Bernadette
Boersma, Berdina
Boersma, Frank
Boersma, Harry
Boersma, Paul
Boersma, Sam
Boersma, William L.
Bohlander & Holmes, Inc.
Bokma, Peter
Bollema, Jacob
Boonstoo, Edward
Bootsma, Jim
Borba, Dolene
Borba, Dolores
Borba, Emily
Borba, George
Borba, John
Borba, John & Sons
Borba, John Jr.
Borba, Joseph A.
Borba, Karen E.
Borba, Karen M.
Borba, Pete, Estate of
Borba, Ricci
Borba, Steve
Borba, Tom
Bordisso, Alleck
Borges, Angelica M.
Bothof, Roger W.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Borges, John O.	Bouma, Cornie
Borges, Linda L.	Bouma, Emma
Borges, Manual Jr.	Bouma, Henry P.
Borges, Tony	Bouma, Martin
Bos, Aleid	Bouma, Peter G. & Sons Dairy
Bos, Gerrit	Bouma, Ted
Bos, John	Bouman, Helen
Bos, John	Bouman, Sam
Bos, Margaret	Bower, Mabel E.
Bos, Mary	Boys Republic
Bos, Mary Beth	Breedyk, Arie
Bos, Tony	Breedyk, Jessie
Bosch, Henrietta	Briano Brothers
Bosch, Peter T.	Briano, Albert
Boschma, Betty	Briano, Albert Trustee for
Boschma, Frank	Briano, Albert Frank
Boschma, Greta	Briano, Lena
Boschma, Henry	Brink, Russell N.
Bosma, Dick	Brinkerhoff, Margaret
Bosma, Florence G.	Brinkerhoff, Robert L.
Bosma, Gerrit	Britschgi, Florence
Bosma, Jacob J.	Britschgi, Magdalena Garetto
Bosma, Jeanette Thea	Britschgi, Walter P.
Bosman, Frank	Brommer, Marvin
Bosman, Nellie	Brookside Enterprizes, dba
Bosnyak, Goldie M.	Brookside Vineyard Co.
Bosnyak, Martin	Brothers Three Dairy
Brown, Eugene	Chino Corona Investment

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Brun, Martha M.

Brun, Peter Robert

Buma, Duke

Buma, Martha

Bunse, Nancy

Bunse, Ronnie L.

Caballero, Bonnie L.

Caballero, Richard F.

Cable Airport Inc.

Cadlini, Donald

Cadlini, Jesse R.

Cadlini, Marie Edna

Cambio, Anna

Cambio, Charles, Estate of

Cambio, William V.

Cardoza, Florence

Cardoza, Olivi

Cardoza, Tony

Carnesi, Tom

Carver, Robt M., Trustee

Cauffman, John R.

Chacon Bros.

Chancon, Elvera P.

Chacon, Joe M.

Chacon, Robert M.

Chacon, Virginia L.

Chez, Joseph C.

Chino Water Co.

Christensen, Leslie

Christensen, Richard G.

Christian, Ada R.

Christian, Harold F.

Christy, Ella J.

Christy, Ronald S.

Cihigoyenetche, Jean

Cihigoyenetche, Leona

Cihigoyenetche, Martin

Clarke, Arthur B.

Clarke, Nancy L.

Clarke, Phyllis J.

Coelho, Isabel

Coelho, Joe A. Jr.

Collins, Howard E.

Collins, Judith F.

Collinsworth, Ester L.

Collinsworth, John E.

Collinsworth, Shelby

Cone Estate (05-2-00648/649)

Consolidated Freightways Corp.
of Delaware

Corona Farms Co.

Corra, Rose

Costa, Dimas S.

Costa, Laura

Costa, Myrtle

De Boer, L.H.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Costamagna, Antonio	De Boer, Sidney
Costamagna, Joseph	De Bos, Andrew
Cousyn, Claus B.	De Graaf, Anna Mae
Cramer, Carole F.	De Graaf, Gerrit
Cramer, William R.	De Groot, Dick
Crossroads Auto Dismantlers, Inc.	De Groot, Dorothy
Crouse, Beatrice I.	De Groot, Ernest
Crouse, Roger	De Groot, Henrietta
Crowley, Juanita C.	De Groot, Jake
Crowley, Ralph	De Groot, Pete Jr.
Cucamonga Vintners	De Haan, Bernadena
D'Astici, Teresa	De Haan, Henry
Da Costa, Cecilia B.	De Hoog, Adriana
Da Costa, Joaquim F.	De Hoog, Joe
Daloisio, Norman	De Hoog, Martin
De Berard Bros.	De Hoog, Martin L.
De Berard, Arthur, Trustee	De Hoog, Mitch
De Berard, Charles	De Hoog, Tryntje
De Berard, Chas., Trustee	De Jager, Cobi
De Berard, Helan J.	De Jager, Edward D.
De Berard, Robert	De Jong Brothers Dairy
De Berard, Robert Trustee	De Jong, Cornelis
De Bie, Adrian	De Jong, Cornelius
De Bie, Henry	De Jong, Grace
De Bie, Margaret M.	De Jong, Jake
De Bie, Marvin	De Jong, Lena
De Boer, Fred	De Leeuw, Alice
De Leeuw, Sam	Dirkse, Catherine

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

De Soete, Agnes
De Soete, Andre
De Vries, Abraham
De Vries, Case
De Vries, Dick
De Vries, Evelyn
De Vries, Henry, Estate of
De Vries, Hermina
De Vries, Jack H.
De Vries, Jane
De Vries, Janice
De Vries, John
De Vries, John J.
De Vries, Neil
De Vries, Ruth
De Vries, Theresa
De Wit, Gladys
De Wit, Peter S.
De Wyn, Evert
De Zoete, Hattie V.
Do Zoete, Leo A.
Decker, Hallie
Decker, Henry A.
Demmer, Ernest
Di Carlo, Marie
Di Carlo, Victor
Di Tommaso, Frank
Dirkse, Charles C.
Dixon, Charles E.
Dixon, Geraldine A.
Doesberg, Hendrica
Doesburg, Theodorus, P.
Dolan, Marion
Dolan, Michael H.
Dominguez, Helen
Dominguez, Manual
Donkers, Henry A.
Donkers, Nellie G.
Dotta Bros.
Douma Brothers Dairy
Douma, Betty A.
Douma, Fred A.
Douma, Hendrika
Douma, Herman G.
Douma, Narleen J.
Douma, Phillip M.
Dow Chemical Co.
Dragt, Rheta
Dragt, William
Driftwood Dairy Farm
Droogh, Case
Duhalde, Marian
Duhalde, Lauren
Duits, Henrietta
Duits, John
Excelsior Farms
F.D.I.C.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

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

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Gardner, Leland V.
Gardner, Lola M.
Garrett, Leonard E.
Garrett, Patricia T.
Gastelluberry, Catherine
Gastelluberry, Jean
Gilstrap, Glen E.
Gilstrap, Marjorie J.
Godinho, John
Godinho, June
Gonsalves, Evelyn
Gonsalves, John
Gorzeman, Geraldine
Gorzeman, Henry A.
Gorzeman, Joe
Govea, Julia
Goyenetche, Albert
Grace, Caroline E.
Grace, David J.
Gravatt, Glenn W.
Gravatt, Sally Mae
Greydanus Dairy, Inc.
Greydanus, Rena
Griffin Development Co.
Haagsma, Dave
Haagsma, John
Hansen, Mary D.
Hanson, Ardeth W.
Harada, James T.
Harada, Violet A.
Haringa, Earl and Sons
Haringa, Herman
Haringa, Rudy
Haringa, William
Harper, Cecilia de Mille
Harrington, Winona
Harrison, Jacqueline A.
Hatanaka, Kenichi
Heida, Annie
Heida, Don
Heida, Jim
Heida, Sam
Helms, Addison D.
Helms, Irma A.
Hermans, Alma I.
Hermans, Harry
Hettinga, Arthur
Hettinga, Ida
Hettinga, Judy
Hettinga, Mary
Hettinga, Wilbur
Heublein, Inc., Grocery Products Group
Hibma, Catherine M.
Hibma, Sidney
Hohberg, Harold C.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Hicks, Kenneth I.
Hicks, Minnie M.
Higgins Brick Co.
Highstreet, Alfred V.
Highstreet, Evada V.
Hilarides, Bertha as Trustee
Hilarides, Frank
Hilarides, John as Trustee
Hindelang, Tillie
Hindelang, William
Hobbs, Bonnie C.
Hobbs, Charles W.
Hobbs, Hazel I.
Hobbs, Orlo M.
Hoekstra, Edward
Hoekstra, George
Hoekstra, Grace
Hoekstra, Louie
Hofer, Paul B.
Hofer, Phillip F.
Hofstra, Marie
Hogeboom, Jo Ann M.
Hogeboom, Maurice D.
Hogg, David V.
Hogg, Gene P.
Hogg, Warren G.
Hohberg, Edith J.
Hohberg, Harold W.
Holder, Arthur B.
Holder, Dorothy F.
Holmes, A. Lee
Holmes, Frances P.
Hoogeboom, Gertrude
Hoogeboom, Pete
Hoogendam, John
Hoogendam, Tena
Houssels, J. K. Thoroughbred Farm
Hunt Industries
Idsinga, Ann
Idsinga, William W.
Imbach Ranch, Inc.
Imbach, Kenneth E.
Imbach, Leonard K.
Imbach, Oscar K.
Imbach, Ruth M.
Indaburu, Jean
Indaburu, Marceline
Iseli, Kurt H.
Ito, Kow
J & B Dairy Inc.
Jaques, Johnny C. Jr.
Jaques, Mary
Jaques, Mary Lou
Jay Em Bee Farms
Knevelbaard, John

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Johnson Bro's Egg Ranches, Inc.	Knudsen, Ejnar
Johnston, Ellwood W.	Knudsen, Karen M.
Johnston, George F. Co.	Knudsen, Kenneth
Johnston, Judith H.	Knudson, Robert
Jones, Leonard P.	Knudson, Darlene
Jongsma & Sons Dairy	Koel, Helen S.
Jongsma, Diana A.	Koetsier, Gerard
Jongsma, Dorothy	Koetsier, Gerrit J.
Jongsma, George	Koetsier, Jake
Jongsma, Harold	Koning, Fred W.
Jongsma, Henry	Koning, Gloria
Jongsma, John	Koning, J. W. Estate
Jongsma, Nadine	Koning, James A.
Jongsma, Tillie	Koning, Jane
Jordan, Marjorie G.	Koning, Jane C.
Jordan, Troy O.	Koning, Jennie
Jorritsma, Dorothy	Koning, John
Juliano, Albert	Koning, Victor A.
Kamper, Cornelis	Kooi Holstein Corporation
Kamstra, Wilbert	Koolhaas, Kenneth E.
Kaplan, Lawrence J.	Koolhaas, Simon
Kasbergen, Martha	Koolhaas, Sophie Grace
Kasbergen, Neil	Koopal, Grace
Kazian, Angelen Estate of	Koopal, Silas
Kingsway, Const. Corp.	Koopman, Eka
Klapps Market	Koopman, Gene T.
Kline, James K.	Koopman, Henry G.
Koopman, Ted	Leck, Arthur A.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Koopman, Tena

Koot, Nick

Koster, Aart

Koster, Frances

Koster, Henry B.

Koster, Nellie

Kroes, Jake R.

Kroeze, Bros

Kroeze, Calvin E.

Kroeze, John

Kroeze, Wesley

Kruckenberg, Naomi

Kruckenberg, Perry

L. D. S. Welfare Ranch

Labrucherie, Mary Jane

Labrucherie, Raymond F.

Lako, Samuel

Landman Corp.

Lanting, Broer

Lanting, Myer

Lass, Jack

Lass, Sandra L.

Lawrence, Cecelia, Estate of

Lawrence, Joe H., Estate of

Leal, Bradley W.

Leal, John C.

Leal, John Craig

Leck, Evelyn M.

Lee, Harold E.

Lee, Helen J.

Lee, Henrietta C.

Lee, R. T. Construction Co.

Lekkerkerk, Adriana

Lekkerkerk, L. M.

Lekkerkerker, Nellie

Lekkerkerker, Walt

Lewis Homes of California

Livingston, Dorothy M.

Livingston, Rex E.

Lokey, Rosemary Kraemer

Lopes, Candida A.

Lopes, Antonio S.

Lopez, Joe D.

Lourenco, Carlos, Jr.

Lourenco, Carmelina P.

Lourenco, Jack C.

Lourenco, Manual H.

Lourenco, Mary

Lourenco, Mary

Luiten, Jack

Luiz, John M.

Luna, Christine I.

Luna, Ruben T.

Lusk, John D. and Sons A California Corporation

Lyon, Gregory E.

Mickel, Louise

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Lyon, Paula E.

M & W Co. #2

Madole, Betty M.

Madole, Larry B.

Marquez, Arthur

Marquine, Jean

Martin, Lelon O.

Martin, Leon O.

Martin, Maria D.

Martin, Tony J.

Martins, Frank

Mathias, Antonio

Mc Cune, Robert M.

Mc Masters, Gertrude

Mc Neill, J. A.

Mc Neill, May F.

Mees, Leon

Mello and Silva Dairy

Mello and Sousa Dairy

Mello, Emilia

Mello, Enos C.

Mello, Mercedes

Mendiondo, Catherine

Mendiondo, Dominique

Meth. Hosp. – Sacramento

Metzger, R. S.

Metzger, Winifred

Miersma, Dorothy

Meirsma, Harry C.

Minaberry, Arnaud

Minaberry, Marie

Mistretta, Frank J.

Mocho and Plaa Inc.

Mocho, Jean

Mocho, Noeline

Modica, Josephine

Montes, Elizabeth

Montes, Joe

Moons, Beatrice

Moons, Jack

Moramarco, John A. Enterprise

Moreno, Louis W.

Moss, John R.

Motion Pictures Associates, Inc.

Moynier, Joe

Murphy, Frances V.

Murphy, Myrl L.

Murphy, Naomi

Nanne, Martin Estate of

Nederend, Betty

Nederend, Hans

Norfolk, James

Norfolk, Martha

Notrica, Louis

Nyberg, Lillian N.

Ormonde, Viva

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Nyenhuis, Annie

Nyenhuis, Jim

Occidental Land Research

Okumura, Marion

Okumura, Yuiche

Oldengarm, Effie

Oldengarm, Egbert

Oldengarm, Henry

Oliviera, Manuel L.

Oliviera, Mary M.

Olson, Albert

Oltmans Construction Co.

Omlin, Anton

Omlin, Elsie L.

Ontario Christian School Assn.

Oord, John

Oostdam, Jacoba

Oostdam, Pete

Oosten, Agnes

Oosten, Anthonia

Oosten, Caroline

Oosten, John

Oosten, Marinus

Oosten, Ralph

Orange County Water District

Ormonde, Manuel

Ormonde, Pete, Jr.

Ortega, Adeline B.

Ortega, Bernard Dino

Osterkamp, Joseph S.

Osterkamp, Margaret A.

P I E Water Co.

Palmer, Eva E.

Palmer, Walter E.

Parente, Luis S.

Parente, Mary Borba

Parks, Jack B.

Parks, Laura M.

Patterson, Lawrence E. Estate of

Payne, Clyde H.

Payne, Margo

Pearson, Athelia K.

Pearson, William C.

Pearson, William G.

Pene, Robert

Perian, Miller

Perian, Ona E.

Petrissans, Deanna

Petrissans, George

Petrissans, Jean P.

Petrissans, Marie T.

Pickering, Dora M.

(Mrs. A. L. Pickering)

Pierce, John

Pierce, Sadie

Righetti, A. T.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Pietszak, Sally

Pine, Joe

Pine, Virginia

Pires, Frank

Pires, Marie

Plaa, Jeanne

Plaa, Michel

Plantenga, Agnes

Plantenga, George

Poe, Arlo D.

Pomona Cemetery Assn.

Porte, Cecelia, Estate of

Porte, Garritt, Estate of

Portsmouth, Vera McCarty

Ramella, Mary M.

Ramirez, Concha

Rearick, Hildegard H.

Rearick, Richard R.

Reinalda, Clarence

Reitsma, Greta

Reitsma, Louis

Rice, Bernice

Rice, Charlie E.

Richards, Karin

(Mrs. Ronnie Richards)

Richards, Ronald L.

Ridder, Jennie Wassenaar

Riley, George A.

Riley, Helen C.

Robbins, Jack K.

Rocha, John M.

Rocha, Jose C.

Rodrigues, John

Rodrigues, Manuel

Rodrigues, Manuel, Jr.

Rogrigues, Mary L.

Rodriquez, Daniel

Rogers, Jack D.

Rohrer, John A.

Rohrer, Theresa D.

Rohrs, Elizabeth H.

Rossetti, M. S.

Roukema, Angeline

Roukema, Ed.

Roukema, Nancy

Roukema, Siebren

Ruderian, Max J.

Russell, Fred J.

Rusticus, Ann

Rusticus, Charles

Rynsburger, Arie

Rynsburger, Berdena, Trust

Rynsburger, Joan Adele

Rynsburger, Thomas

S. P. Annex, Inc.

Scott, Frances M.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Salisbury, Elinor J.
Sanchez, Edmundo
Sanchez, Margarita O.
Santana, Joe Sr.
Santana, Palmira
Satragni, John B. Jr.
Scaramella, George P.
Schaafsma Bros.
Schaafsma, Jennie
Schaafsma, Peter
Schaafsma, Tom
Schaap, Andy
Schaap, Ids
Schaap, Maria
Schacht, Sharon C.
Schakel, Audrey
Schakel, Fred
Schmid, Olga
Schmidt, Madeleine
Schoneveld, Evert
Schoneveld, Henrietta
Schoneveld, John
Schoneveld, John Allen
Schug, Donald E.
Schug, Shirley A.
Schuh, Bernatta M.
Schuh, Harold H.
Scott, Linda F.
Scott, Stanley A.
Scritsmier, Lester J.
Serl, Charles A.
Serl, Rosalie P.
Shady Grove Dairy, Inc.
Shamel, Burt A.
Shelby, Harold E.
Shelby, John A.
Shelby, Velma M.
Shelton, Alice A.
Sherwood, Robert W.
Sherwood, Sheila J.
Shue, Eva
Shue, Gilbert
Sieperda, Anne
Sieperda, James
Sigrist, Hans
Sigrist, Rita
Silveira, Arline L.
Silveira, Frank
Silveira, Jack
Silveira, Jack P. Jr.
Simas, Dolores
Simas, Joe
Singleton, Dean
Singleton, Elsie R.

Sinnott, Jim
Staal, John

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Sinnott, Mildred B.
Slegers, Dorothy
Slegers, Hubert J.
Slegers, Jake
Slegers, Jim
Slegers, Lenwood M.
Slegers, Martha
Slegers, Tesse J.
Smith, Edward S.
Smith, Helen D.
Smith, James E.
Smith, Keith J.
Smith, Lester W.
Smith, Lois Maxine
Smith, Marjorie W.
Soares, Eva
Sogioka, Mitsuyoshi
Sogioka, Yoshimato
Sousa, Sam
Southern Pacific Land Co.
Southfield, Eddie
Souza, Frank M.
Souza, Mary T.
Spickerman, Alberta
Spickerman, Florence
Spickerman, Rudolph
Spyksma, John
Stahl, Zippora P.
Stampfl, Berta
Stampfl, William
Stanley, Robert E.
Stark, Everett
Stellingwerf, Andrew
Stellingwerf, Henry
Stellingwerf, Jenette
Stellingwerf, Shana
Stellingwerf, Stan
Stelzer, Mike C.
Sterk, Henry
Stiefel, Winifred
Stiefel, Jack D.
Stigall, Richard L.
Stigall, Vita
Stockman's Inn
Stouder, Charlotte A.
Stouder, William C.
Struikmans, Barbara
Struikmans, Gertie
Struikmans, Henry Jr.
Struikmans, Henry Sr.
Struikmans, Nellie
Swager, Edward
Swager, Gerben
Swager, Johanna
Swager, Marion
Terpstra, Theodore G.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Swierstra, Donald
Swierstra, Fanny
Sybrandy, Ida
Sybrandy, Simon
Sytsma, Albert
Sytsma, Edith
Sytsma, Jennie
Sytsma, Louie
Te Velde, Agnes
Te Velde, Bay
Te Velde, Bernard A.
Te Velde, Bonnie
Te Velde, Bonnie G.
Te Velde, George
Te Velde, George, Jr.
Te Velde, Harm
Te Velde, Harriet
Te Velde, Henry J.
Te Velde, Jay
Te Velde, Johanna
Te Velde, John H.
Te Velde, Ralph A.
Te Velde, Zwaantina, Trustee
Ter Maaten, Case
Ter Maaten, Cleone
Ter Maaten, Steve
Terpstra, Carol
Teune, Tony
Teunissen, Bernard
Teunissen, Jane
Thomas, Ethel M.
Thommen, Alice
Thommen, Fritz
Tillema, Allie
Tillema, Harold
Tillema, Klaas D.
Timmons, William R.
Tollerup, Barbara
Tollerup, Harold
Trapani, Louis A.
Trimlett, Arlene R.
Trimlett, George E.
Tristant, Pierre
Tuinhout, Ale
Tuinhout, Harry
Tuinhout, Hilda
Tuls, Elizabeth
Tuls, Jack S.
Tuls, Jake
Union Oil Company of California
United Dairyman's Co-op.
Urquhart, James G.
Usle, Cathryn
Usle, Faustino

V & Y Properties
Van Hofwegen, Clara

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Vaile, Beryl M.
Valley Hay Co.
Van Beek Dairy Inc.
Van Canneyt Dairy
Van Canneyt, Maurice
Van Canneyt, Wilmer
Van Dam, Bas
Van Dam, Isabelle
Van Dam, Nellie
Van Den Berg, Gertrude
Van Den Berg, Joyce
Van Den Berg, Marinus
Van Den Berg, Marvin
Van Der Linden, Ardith
Van Der Linden, John
Van Der Linden, Stanley
Van Der Veen, Kenneth
Van Diest, Anna T.
Van Diest, Cornelius
Van Diest, Ernest
Van Diest, Rena
Van Dyk, Bart
Van Dyk, Jeanette
Van Foeken, Martha
Van Foeken, William
Van Hofwegen, Steve
Van Hofwegen, Adrian A.
Van Hofwegen, Jessie
Van Klaveren, A.
Van Klaveren, Arie
Van Klaveren, Wilhelmina
Van Klaveren, William
Van Leeuwen, Arie C.
Van Leeuwen, Arie C.
Van Leeuwen, Arlan
Van Leeuwen, Clara G.
Van Leeuwen, Cornelia L.
Van Leeuwen, Harriet
Van Leeuwen, Jack
Van Leeuwen, John
Van Leeuwen, Letie
Van Leeuwen, Margie
Van Leeuwen, Paul
Van Leeuwen, William A.
Van Ravenswaay, Donald
Van Ryn Dairy
Van Ryn, Dick
Van Surksum, Anthonetta
Van Surksum, John
Van Veen, John
Van Vliet, Effie
Van Vliet, Hendrika
Van Vliet, Hugo
Van Vliet, Klaas

Vande Witte, George
Vander Laan, Katie

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Vanden Berge, Gertie	Vander Laan, Martin Jr.
Vanden Berge, Gertie	Vander Laan, Tillie
Vanden Berge, Jack	Vander Leest, Anna
Vanden Berge, Jake	Vander Leest, Ann
Vanden Brink, Stanley	Vander Meer, Alice
Vander Dussen, Agnes	Vander Meer, Dick
Vander Dussen, Cor	Vander Poel, Hank
Vander Dussen, Cornelius	Vander Poel, Pete
Vander Dussen, Edward	Vander Pol, Irene
Vander Dussen, Geraldine Marie	Vander Pol, Margie
Vander Dussen, James	Vander Pol, Marines
Vander Dussen, John	Vander Pol, William P.
Vander Dussen, Nelvina	Vander Schaaf, Earl
Vander Dussen, Rene	Vander Schaaf, Elizabeth
Vander Dussen, Sybrand Jr.	Vander Schaaf, Henrietta
Vander Dussen, Sybrand Sr.	Vander Schaaf, John
Vander Dussen Trustees	Vander Schaaf, Ted
Vander Eyk, Case Jr.	Vander Stelt, Catherine
Vander Eyk, Case Sr.	Vander Stelt, Clarence
Vander Feer, Peter	Vander Tuig, Arlene
Vander Feer, Rieka	Vander Tuig, Sylvester
Vander Laan, Ann	Vander Veen, Joe A.
Vander Laan, Ben	Vandervlag, Robert
Vander Laan, Bill	Vander Zwan, Peter
Vander Laan, Corrie	Vanderford, Betty W.
Vander Laan, Henry	Vanderford, Claud R.
Vander Laan, James	Vanderham, Adrian
Vanderham, Cornelius	Vestal, J. Howard

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Vanderham, Cornelius P.
Vanderham, Cory
Vanderham, E. Jane
Vanderham, Marian
Vanderham, Martin
Vanderham, Pete C.
Vanderham, Wilma
Vasquez, Eleanor
Veenendaal, Evert
Veenendaal, John H.
Veiga, Dominick, Sr.
Verbree, Jack
Verbree, Tillie
Verger, Bert
Verger, Betty
Verhoeven, Leona
Verhoeven, Martin
Verhoeven, Wesley
Vermeer, Dick
Vermeer, Jantina
Vernola Ranch
Vernola, Anthonietta
Vernola, Anthony
Vernola, Frank
Vernola, Mary Ann
Vernola, Pat F.
Vestal, Frances Lorraine
Visser, Gerrit
Visser, Grace
Visser, Henry
Visser, Jess
Visser, Louie
Visser, Neil
Visser, Sam
Visser, Stanley
Visser, Tony D.
Visser, Walter G.
Von Der Ahe, Fredric T.
Von Euw, George
Von Euw, Majorie
Von Lusk, a limited partnership
Voortman, Anna Marie
Voortman, Edward
Voortman, Edwin J.
Voortman, Gertrude Dena
Wagner, Richard H.
Walker, Carole R.
Walker, Donald E.
Walker, Wallace W.
Wardle, Donald M.
Warner, Dillon B.
Warner, Minnie
Wassenaar, Peter W.
Waters, Michael

Weeda, Adriana
Wiersma, Jake

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

Weeda, Daniel
Weeks, O. L.
Weeks, Verona E.
Weidman, Maurice
Weidman, Virginia
Weiland, Adaline I.
Weiland, Peter J.
Wesselink, Jules
West, Katharine R.
West, Russel
West, Sharon Ann
Western Horse Property
Westra, Alice
Westra, Henry
Westra, Hilda
Westra, Jake J.
Weststeyn, Freida
Weststeyn, Pete
Whitehurst, Louis G.
Whitehurst, Pearl L.
Whitmore, David L.
Whitmore, Mary A.
Whitney, Adolph M.
Wiersema, Harm
Wiersema, Harry
Wiersma, Ellen H.
Wiersma, Gladys J.
Wiersma, Otto
Wiersma, Pete
Winchell, Verne H., Trustee
Wind, Frank
Wind, Fred
Wind, Hilda
Wind, Johanna
Woo, Frank
Woo, Sem Gee
Wybenga, Clarence
Wybenga, Gus
Wybenga, Gus K.
Wybenga, Sylvia
Wynja, Andy
Wynja, Iona F.
Yellis, Mildred
Yellis, Thomas E.
Ykema-Harmsen Dairy
Ykema, Floris
Ykema, Harriet
Yokley, Betty Jo
Yokley, Darrell A.
Zak, Zan
Zivelonghi, George
Zivelonghi, Margaret
Zwaagstra, Jake
Zwaagstra, Jessie M.
Zwart, Case

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

NON-PRODUCER WATER DISTRICTS

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

Hein Hettinga

Dick Hofstra, Jr.

Benjamin M. Hughey

Frieda L. Hughey

Guillaume Indart

Ellwood B. Johnston, Trustee

Perry Kruckenberg, Jr.

Martin Verburg

Donna Vincent

Larry Vincent

Cliff Wolfe & Associates

Ada M. Woll

Zarubica Co.

Lila Shaw

Cathy M. Stewart

Marvin C. Stewart

Betty Ann Stone

John B. Stone

Vantoll Cattle Co., Inc.

Catherine Verburg

EXHIBIT "D"

OVERLYING NON-AGRICULTURAL RIGHTS

Party	Total Overlying Non-Agricultural Rights (Acre-Feet)	Share of Safe Yield (Acre-Feet)
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.	0	0.000
Totals	9,409	7,366.000

EXHIBIT "E"

APPROPRIATIVE RIGHTS

Party	Appropriative Right (Acre Feet)	Share of Initial Operating Safe Yield (Acre-Feet)	Share of Operating Safe Yield (Percent)
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	1,361.3	947.714	1.728
TOTAL	78,763.8	55,834.000	100.000

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.[8]

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.[9]

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.

[8] 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.
[9] 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.[10]

(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***

[10] 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. [11]

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:

[11] 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 us 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.

~~9~~**10**. 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. [12]

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.

[12] 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.[13] 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*

[13] 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 allocat*e 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.* [14]

(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.**

[14] Order dated September 28, 2000 and Order dated April 19, 2001.

(5) <u>Administrative Costs</u>. 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. <u>In Lieu Procedures</u>. 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) <u>Method of Operation</u>. - 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.[15]

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 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

[15] 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.

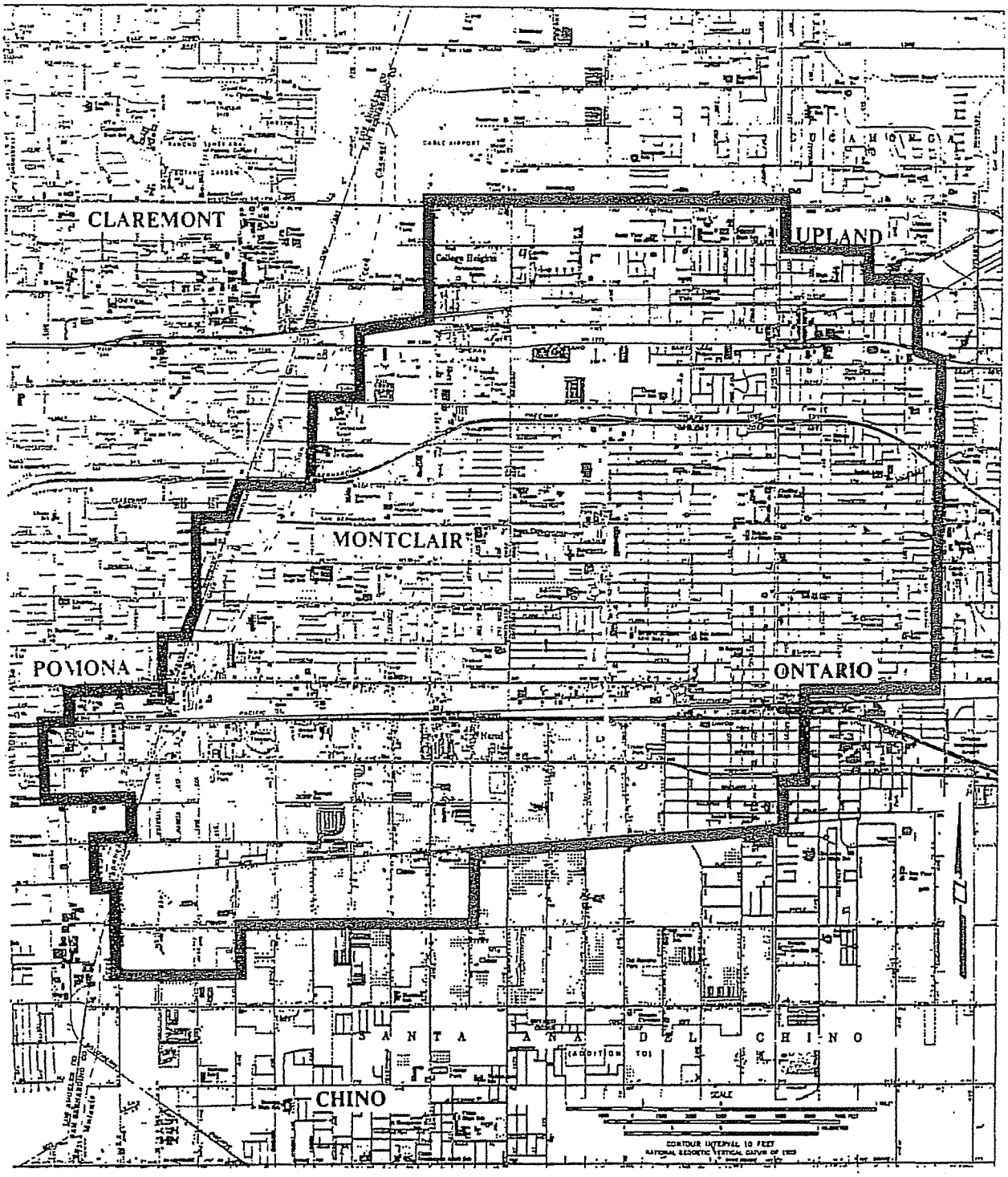
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CHINO BASIN

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.

EXHIBIT J

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Attorneys for CITY OF ONTARIO

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendants.

Case No. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO HONORABLE GILBERT G. OCHOA

DECLARATION OF COURTNEY JONES IN SUPPORT OF CITY OF ONTARIO'S MOTION CHALLENGING WATERMASTER'S NOVEMBER 17, 2022 DECISION TO APPROVE THE FY 2022/2023 ASSESSMENT PACKAGE

Date: March 21, 2023
Time: 9:00 a.m.
Dept: S24
Judge: Gilbert Ochoa

I, Courtney Jones, declare as follows:

1. I have personal knowledge of the facts stated in this Declaration and, if called as a witness, could and would testify competently to those facts.

2. I am the Water Resources and Regulatory Affairs Director at the City of Ontario ("Ontario") and have held that position since March 2021. Prior to March 2021, I was employed by Ontario as a Senior Associate Civil Engineer and subsequently the Water Resources Manager.

3. I make this Declaration in support of Ontario's Motion Challenging Watermaster's November 17, 2022 Actions/Decision to Approve the FY 2022/2023 Assessment Package.

I. DRY YEAR YIELD PROGRAM AND PERFORMANCE CRITERIA

A. Storage and Recovery Application, and Storage Agreement

4. On April 2, 2003 IEUA submitted an Application under Article X of the Watermaster Rules and Regulations for a 100,000 acre-foot storage account in Watermaster's Storage and Recovery Program. (See Request for Judicial Notice ("RJN"), Ex. 14 at 13:16-18.) This storage account would be used to implement the terms of the Groundwater Storage Program Funding Agreement ("Funding Agreement") that was executed by the Metropolitan Water District ("MWD"), Inland Empire Utilities Agency ("IEUA"), Three Valleys Municipal Water District ("TVMWD"), and Chino Basin Watermaster ("Watermaster") on June 19, 2003. (*Id*., Ex. 8.)

5. On October 23, 2003, the Advisory Committee and Board considered the Application and adopted the findings and recommendation of the staff report to approve the Application conditioned upon yearly approval of the Annual Operating Plan. (See RJN, Ex. 14 at 21:20-22.)

6. On June 24, 2004, the Watermaster's Motion for Approval of Storage and Recovery Program Agreement (DYY Storage Agreement) was argued and submitted to the Court. The DYY Storage Agreement was approved by the Court on the same date (the "2004 Court Order"). (RJN, Ex. 15.) The DYY Storage Agreement states that "Any modification of facilities that is materially different from those contemplated by the Local Agency Agreement will require the filing of a new application…" (*Id*., Ex. 14 at Ex. A, ¶ III.A.2.) Also, "Watermaster shall not approve an Annual

Operating Plan that may cause Material Physical Injury…" (*Id*., Ex. 14 at Ex. A, ¶ IV.F.)

7. The 2004 Court Order also states "Finally, the Judgment provides that agreements for storage 'shall first be approved by written order of the Court' and must include terms that will 'preclude operations which will have a substantial adverse impact on other producers.'" (RJN, Ex. 15 at 3:6-9, quoting Judgment at ¶ 28 [RJN, Ex. 1].) The 2004 Court Order also states "The DYY Storage Agreement calls for the development of Annual Operating Plans…and is to have sufficient detail to allow Watermaster to assess the potential for any adverse impacts on producers. Pursuant to Judgment paragraph 28, Watermaster may not approve an Annual Operating Plan that will have a substantial adverse impact on producers." (*Id.*, Ex. 15 at 4:3-8; see also *id*., Ex. 1 at ¶ 28.)

8. The Local Agency Agreements and DYY Storage Agreement as referenced in the 2003 and 2004 Court Orders, are the Dry Year Yield Program ("DYY Program"). Any substantial changes that affect these elements of the DYY Program must be approved through the Watermaster Approval Process and not only approved by the signatories of the Funding Agreement.

B. 2003 Funding Agreement and Exhibit G Performance Criteria

9. The Groundwater Storage Program Funding Agreement ("Funding Agreement") was approved through the Chino Basin Watermaster approval process in February 2003 and signed by MWD, IEUA, TVMWD, and Watermaster in June 2003. (See RJN, Ex. 8.) As noted, above, this Funding Agreement was ultimately approved via a June 5, 2003 Court Order ("2003 Court Order"). (*Id.*, Ex. 9.) A flow chart depicting the approval process for the Funding Agreement is attached as Exhibit 3.

10. As stated within the 2003 Court Order, "Watermaster takes the position that the Funding Agreement itself is a not a 'Storage Agreement,' as that term is used in the Judgment. '[W]hile the [Funding] Agreement commits the parties to allocate 100,000 AF of the 500,000 AF Storage and Recovery Program to Metropolitan, the specific location and operation of the facilities necessary to accomplish this commitment must still be analyzed by Watermaster under the Material Physical Injury standard of the Peace Agreement and Rules and Regulations. This approval will

take the form of Watermaster approval of the Local Agency Agreements by way of a Storage and Recovery Application filed under Article X of Watermaster's Rules and Regulations.'" (RJN, Ex. 9 at 3:1-9.)

11. Also stated is, "However, it is clear that until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application, or some equivalent approval process is completed, the storage and recovery cannot be undertaken. The Judgment mandates that the Funding Agreement be reviewed in this context." (RJN, Ex. 9 at 3:22-26.)

12. The 2003 Court Order only declares that the Dry Year Yield Program is "described" in the Funding Agreement: "The Court finds that the weight of evidence support Watermaster's finding that the ***DYY Program, as described in the Funding Agreement***, will provide broad mutual benefits to the parties to the Judgment." (RJN, Ex. 9 at 6:15-17 (emphasis added).)

13. Exhibit G of the Funding Agreement also describes the "Chino Basin Conjunctive Use 'Dry Year' Storage Project Performance Criteria." (RJN, Ex. 8 at Ex. G.) However, because IEUA and TVMWD are not local water producers, these performance criteria are placed onto their member agencies to perform.

14. The Exhibit G Performance Criteria include both groundwater and imported water criteria. (RJN, Ex. 8 at Ex. G.) The imported water criteria require a roll-off from imported water supplies and onto groundwater production from the DYY Program. In this way, an agency can only claim DYY credit that is equal to their shift off of their use of imported water and onto DYY Program groundwater in any one year.

C. 2003 Local Agency Agreements[1]

15. From March to July 2003, Local Agency Agreements were executed between IEUA/TVMWD and their Member Agencies (see list below):

(a) Cucamonga Valley Water District (CVWD)

(b) City of Pomona (Pomona)

(c) City of Chino Hills (Chino Hills)

[1] Copies of the CVWD, Ontario, and JCSD via Ontario Local Agency Agreements are included in the RJN at Exhibits 10-12.

(d) City of Chino (Chino)

(e) Monte Vista Water District (MVWD)

(f) City of Ontario (Ontario)

(g) City of Upland (Upland)

(h) Jurupa Community Services District (JCSD) via Ontario

16. These Local Agency Agreements contain an Exhibit A, which specifies each agency's facilities to be used towards operation of the DYY Program as funded by the Funding Agreement. (See RJN, Exs. 10-12 at Ex. A.) Also, Exhibit B of these agreements describes each agencies' performance targets for both the reduction in imported water demand and corresponding increase in local groundwater pumping. (*Id.* at Ex. B.) These local agency performance targets describe how the MWD performance criteria to be performed by IEUA and TVMWD would be met.

17. FWC does not have a Local Agency Agreement. Notwithstanding this fact, Watermaster permitted FWC to claim DYY Production resulting in a financial windfall to FWC at the expense of other parties, like Ontario, who were required to absorb the additional financial burden.

D. <u>2019 Letter Agreement Approval, 2015 Amendment Approval, and Impact to Performance Criteria</u>

18. Watermaster did not have the authority to approve the 2019 Letter Agreement at a staff level and/or defer their obligations as required by Court orders and court approved agreements to another agency.

19. The Funding Agreement, the Storage Agreement and a subsequent material amendment, Amendment 8, to the DYY Program were approved through the Watermaster Approval Process with amendments to Local Agency Agreements. This included compliance with the Watermaster Approval Process as agenized business items with proper notice.

20. The chart below compares the 2015 Amendment No. 8 timeline versus 2019 Letter Agreement Timeline. A flow chart depicting the approval process for the 2015 Amendment No. 8

and the 2019 Letter Agreement are attached as Exhibits 1 and 2. (See RJN, Exs. 17-22, 27-29.)

Milestones	2015 Amendment No. 8	2019 Letter Agreement
Consideration amongst Operating Parties	Prior to June 2014	Prior to September 2018
Local Agency Agreements with IEUA	Amended between June & December 2014	No Amendments
Watermaster Pool Meeting Item	10/09/2014 - Agenda Item for Approval	09/13/2018 - GM Report Item, no approval
Watermaster Advisory Committee Meeting	10/16/2014 - Agenda Item for Approval	09/20/2018 - GM Report Item, no approval
Watermaster Board Meeting	10/23/2014 - Agenda Item for Approval	09/27/2018 - GM Report Item, no approval
Watermaster General Manager Signature	October 28, 2014	February 19, 2019
Fully Executed	January 23, 2015	March 20, 2019

21. The Funding Agreement has been amended eight times since the initial agreement was signed. Amendments Nos. 1 thru 7 were not approved through the Watermaster Approval Process because, according to Watermaster's own staff report, "[p]rior amendments to the Agreement pertain to the completion timing of facilities and changes in sources of funds…" (See RJN, Ex. 22 at p. 2.) The amendments include:

(a) Amendment No. 1 to Funding Agreement, dated May 6, 2004

(b) Amendment No. 2 to Funding Agreement, dated August 31, 2004

(c) Amendment No. 3 to Funding Agreement, dated 2005

(d) Amendment No. 4 to Funding Agreement, dated May 16, 2008

(e) Amendment No. 5 to Funding Agreement, dated March 6, 2009

(f) Amendment No. 6 to Funding Agreement, dated September 2, 2009

(g) Amendment No. 7 to Funding Agreement, dated July 2010

(h) Amendment No. 8 to Funding Agreement, dated January 28, 2015

22. The 2015 Amendment No. 8 would be the first actual amendment to the DYY Program (not the Funding Agreement) since it amended the performance criteria and needed the amending of the Local Agency Agreements, which all are based on that performance criteria. The

performance criteria are included in the Funding Agreement, but as stated in Section II. below, the DYY Program itself is comprised of the Local Agency Agreements (which contain the performance criteria) and the Storage Agreement.

23. The 2019 Letter Agreement amended one of the performance criteria (by making production out of the DYY Program voluntary without needing an MWD Call) and changed who could participate in the DYY Program. FWC was not part of the DYY Program since they had no local agency agreement, and neither Ontario nor other parties were ever informed that the DYY Program under the 2019 Letter Agreement would allow non-DYY participants to participate. Watermaster staff did not have the authority to approve and sign this 2019 Letter Agreement without approval through the Watermaster Approval Process. The 2019 Letter Agreement changed the performance criteria and should have been approved through the Watermaster Approval Process as an Amendment to the DYY Program.

24. Watermaster authority in regard to cooperation with other agencies is limited under the Judgment. "Subject to prior recommendation or approval of the Advisory Committee, Watermaster may act jointly or cooperate with agencies of the United States and the State of California or any political subdivisions, municipalities or districts or any person to the end that the purpose of the Physical Solution may be fully and economically carried out." (See RJN, Ex. 1 at ¶ 26.)

25. Under the Judgment, the powers and functions of the Advisory Committee includes: "In the event Watermaster proposes to take discretionary action, other than approval or disapproval of a Pool Committee action or recommendation property transmitted, or execute any agreement not theretofore within the scope of an Advisory Committee recommendation, 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." (See RJN, Ex. 1 at ¶ 38(b)[2], Ex. 3 at pp. 18, 21, 25.)

26. The 2019 Letter Agreement revised court orders and court approved agreements, was not properly noticed, and was not authorized at any Watermaster meeting.

E. Proper Noticing - 2012 Non-Agricultural Pool versus Appropriative Pool Ruling and Appeal

27. The within Challenge is not the first challenge to Watermaster's failure to comply with required notice and approval processes. In 2010, the Non-Agricultural Pool ("Non-Ag Pool") filed a motion to have the court find and declare pursuant to paragraph 31 of the Judgment that, (1) Watermaster on behalf of the Appropriative Pool did not deliver to the members of the Non-Agricultural pool a notice of intent to purchase in the time and manner required by the purchase and sale agreement for the purchase of water by Watermaster from the overlying (Non-Agricultural) pool dated September 27, 2007 (see RJN, Ex. 26 at Ex. G); and (2) all of the water subject thereto should be restored to the accounts of the members of the Non-Agricultural (overlying) pool. (*Id.*, Ex. 4 at 3:11-17.)

28. "The trial court ruled that the Watermaster did give notice, by means of the agenda packages and the related discussions…" (RJN, Ex. 5 at p. 3.)

29. The Non-Ag Pool appealed the ruling and contended that:

> "The Trial Court erred by finding that the Watermaster give notice, because:
> (a) The notice never became final.
> (b) The Watermaster did not give notice in the manner specific in the judgment.
> (c) The Watermaster did not give notice to individual members of the Non-Agricultural Pool.
> (d) Participants in meetings did not actually receive an agenda package; they merely received an email saying that the agenda package was available online." (RJN, Ex. 5 at p. 4.)

30. The Court of Appeal agreed with the Non-Ag Pool's contention. "We agree that the notice never became final. Or, to put it another way, everything that was communicated to the Non-Agricultural Pool (or its representative) about giving notice or purchasing the water came with the caveat that the Watermaster had not yet definitively decided to do either; thus, these communications did not constitute notice of intent to purchase." (RJN, Ex. 5 at p. 4.) The Court of Appeal concluded that it "must reverse the trial court's order." (*Id.* at p. 5.)

31. On June 29, 2012 the Trial Court reversed its ruling pursuant to the order of the

Court of Appeal. (RJN, Ex. 6.)

II. 2019 LETTER AGREEMENT, 2019 PEACE AGREEMENT AMENDMENT, DESALTER REPLENISHMENT OBLIGATION

A. 2019 Letter Agreement

32. In 2018, IEUA initiated discussions with the participating agencies for implementing and approving revisions to the DYY Program. These revisions would significantly change the DYY Program by allowing voluntary production out of the DYY Program storage account. These changes provided exemptions from the approved and amended performance criteria in the local agency agreements and allowed for unprecedented amounts of DYY Program production by any one agency. This letter agreement, as implemented, also allowed for agencies without a local agency agreement to participate in the DYY Program.

33. In September 2018, the topic of the letter agreement was listed as "Proposed Changes to DDY Program Operation" under the General Manger's Report in the Pools, Advisory Committee, and Board meeting packages. However, there was no staff report and the General Manager's report was only verbal. The letter agreement was not approved through the Watermaster Approval Process and there was no amendment to the local agency agreements or storage agreement. (See RJN, Exs. 27-29 at Item III.D.1.) Attached hereto as Exhibits 4-6 are true and correct copies of transcripts of the General Manager's report at the meetings of the Appropriative Pool, Advisory Committee and Board.

34. Through the discussion, Ontario staff had questions and concerns with the proposed changes. On July 31, 2018, Ontario emailed IEUA explaining that the City is "neutral" regarding the proposed letter agreement and "Ontario cannot a position of support because we cannot know the full effects of the proposed changes. Without these details, which would best be explained and memorialized in an amendment, we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise." Ontario did not approve the 2019 Letter Agreement. A true and correct copy of the July 31, 2018 email correspondence is attached hereto as Exhibit 7.

35. The 2019 Letter Agreement was signed by the parties to the Funding Agreement in

February 2019. (RJN, Ex. 34.) The 2019 Letter Agreement both references and attaches the Exhibit G Performance Criteria.

B. 2019 Appropriative Pool Pooling Plan and Peace Agreement Amendment

36. On November 27, 2018, the Appropriative Pool approved the "2018 Agreement to Appropriative Pool Pooling Plan and CAMA Amendments" and "[f]urther, the Pool directs its counsel to join in the motion to approve the Appropriative Pool Pooling Plan and CAMA Amendments." (RJN, Ex. 33.) On March 15, 2019 the Court ordered changes to the Appropriative Pool Pooling Plan and amendments to the Peace Agreement. (*Id.*, Ex. 7.) Article VI of the Peace II Agreement was significantly amended to expand upon Section 6.2 with respect to Desalter Replenishment. (*Id.*, Ex. 7, Ex. A at ¶ 6.) For the purposes of determining "Adjusted Physical Production" as part of calculating each party's Remaining Desalter Replenishment Obligation (RDRO), subsection (b)(iv) was added to Section 6.2. (*Ibid*.) Specifically, under subsection (b)(iv)(3), the following was added "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." (*Ibid*. (emphasis added).)

37. This amendment to the Peace Agreement was ordered by the Court in March 2019, the month after the 2019 Letter Agreement. This Court order amending a Court approved agreement allowed for DYY Program water production to be exempt from the RDRO calculation, but does not grant any exemption from Watermaster administrative and special project expenses. This is an example that material changes related to Storage & Recovery Programs including the DYY Program can, should, or are tied to the Peace Agreement, which amendments required formal Watermaster and Court approvals.

38. As described in the Section II, *supra*, the DYY Program consists of both the Local Agency Agreements and DYY Storage Agreement. As specified in the amendment to the Peace Agreement, this exemption only applies to "approved" storage and recovery programs. (RJN, Ex. 7

at Ex. A, ¶ 6(b)(iv)(3).) It should be concluded that the DYY Program consistent with approved and amended local agency agreements and the approved storage agreement in effect in 2015 is the only "approved" storage and recovery program.

39. The 2019 Letter Agreement significantly changed the DYY Program, but was not approved through the Watermaster Approval Process, was signed only by signatories to the Funding Agreement, and was executed without amending the local agency agreements. (See RJN, Ex. 34.)

III. HISTORY AND PRACTICE FOR WATERMASTER ASSESSMENTS

A. Assessable Production

40. The relevant governing documents of the Chino Groundwater Basin state that all water produced is assessed. The Judgment defines "Produce or Produced" as "[t]o pump or extract ground water from Chino Basin." (RJN, Ex. 1 at 3:16.) "Production" is defined as "[a]nnual quantity, stated in acre feet, of water produced." (*Id.* at 3:18.)

41. The Judgment further provides that "[p]roduction assessments, on whatever basis, may be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool." (RJN, Ex. 1 at ¶ 51.)

42. The Appropriative Pool Pooling Plan states, "[c]osts 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." (RJN, Ex. 1 at Ex. H, ¶ 6.)

43. The Judgment also provides that "Watermaster shall have the power to levy assessments against the parties (other than minimal pumpers) based upon production during the preceding period of assessable production…" (RJN, Ex. 1 at ¶ 53.)

44. Under Article IV of the Watermaster's Rules and Regulations, "Watermaster shall levy assessments against the parties…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.]" (RJN, Ex. 2 at § 4.1.) Under Section 4.4, assessment adjustments are described, but neither production from a storage and recovery program or the DYY Program is applicable. (*Id.* at § 4.4.)

45. From review of the above governing documents and relevant agreements and court orders, it must be concluded that nothing exempts groundwater produced through the Dry Year Yield Program from assessments. It can be concluded that any water produced from the Chino Basin is subject to production-based assessments unless otherwise exempt from a court approved agreement or court order.

B. Supplemental Water is Assessed

46. As described above, the governing documents state that all production is assessed. For the purposes of assessable production, there is no distinction between native, stored, or supplemental water. Stored supplemental water is also subject to Watermaster assessments when it is produced, as evidenced in the most recent Watermaster Assessment Package for Assessment Year 2021-2022 (Production Year 2020-2021). (See RJN, Ex. 53.) The Fontana Water Company ("FWC") purchased the City of Fontana's recharged recycled water credit and transferred 2,722.510 AF from FWC's Local Supplemental Storage Recharged Recycled Account to its Excess Carryover (ECO) Storage Account which was then used as Annual Production Right and was included in FWC's assessable production. (*Id.* at pp. 8.1, 10.1-14.1.) Recycled water is a mixture of multiple water sources (imported, groundwater, stormwater) treated through IEUA's regional treatment plants and cannot reasonably be categorized as native water.

C. Imported Water is Assessed

47. Like Supplemental Water, imported water purchased for replenishment purposes is included as assessable production. This is also evidenced in the most recent Assessment Package, specifically for Niagara Bottling LLC ("Niagara"). (RJN, Ex. 53 at pp. 8.1, 10.1, 25.1.) Niagara does not own any water rights in the Chino Basin but is a party to the Judgment and in the Appropriative Pool. Every year, Niagara pays both the replenishment costs and Watermaster production-based assessments on any water it produces from the Chino Basin. If only "native" water is assessed, then it would be concluded that Niagara should only pay replenishment assessments and not Watermaster assessments since Niagara is essentially producing imported water out of the basin.

48. There is no court approved agreement or court order that exempts water produced from a Storage and Recovery program from assessments and there is no evidence that only production of native water is assessed.

D. First Cycle of DYY Program Water was Assessed

49. The first cycle of the DYY Program occurred from Production Years 2002/2003 to 2010/2011, under Assessment Packages 2003/2004 to 2011/2012. (See RJN, Exs. 37-45.) Approximately 90% all water within the DYY Program storage account was subject to Watermaster assessments paid by the participating Appropriative Pool members. It is unclear as to why "In Lieu Recharge" was subject to Watermaster assessments and why "Wet Water Recharge" was not.

E. Second Cycle of DYY Program Water was Not Assessed

50. The second cycle of the DYY Program occurred from Production Years 2016/2017 to 2021/2022, under Assessment Packages 2017/2018 to 2022/2023. (See RJN, Exs. 46-53.) No water within the DYY Program storage account was subject to Watermaster assessments. Attached as Exhibit 8 is a true and correct copy of my correspondence with IEUA relating to the DYY Program and voluntary withdrawal program.

First DYY Cycle Put & Take Assessments

Production Year	Assessment Year	"PUT" - Wet Water Recharge (AF)	"PUT" - In Lieu Recharge (AF)	"TAKE" (AF)[1]	Water Assessed (AF)	Water Not Assessed (AF)[1]
2002/2003	2003/2004		3,000.00		3,000.00	
2003/2004	2004/2005	2,463.40	16,098.30		16,098.30	2,463.40
2004/2005	2005/2006		13,623.25		13,623.25	
2005/2006	2006/2007		20,673.56		20,673.56	
2006/2007	2007/2008		19,636.00		19,636.00	
2007/2008	2008/2009	8,200.70	1,169.25	10,065.94	1,169.25	8,200.70
2008/2009	2009/2010			38,886.20		
2009/2010	2010/2011			25,260.60		
2010/2011	2011/2012			8,372.23		
Totals		84,864.45		82,584.97	74,200.35	8,384.63

Note:
1. Due to basin losses, less water was available for "Take" than was "Put"

(See RJN, Exs. 37-45.)

/ / /

/ / /

Second DYY Cycle Put & Take Assessments

Production Year	Assessment Year	"PUT" - Wet Water Recharge (AF)	"PUT" - In Lieu Recharge (AF)	"TAKE" (AF)[1]	Water Assessed (AF)	Water Not Assessed (AF)[1]
2016/2017	2017/2018	6,314.90				6,314.90
2017/2018	2018/2019	35,069.50				35,069.50
2018/2019	2019/2020	4,617.44				4,617.44
2019/2020	2020/2021	17,419.53		17,394.80		17,419.53
2020/2021	2021/2022			23,000.00		
2021/2022 [2]	2022/2023			22,912.80		
Totals		63,421.36		63,307.60	0.00	63,307.60

Note:
1. Due to basin losses, less water was available for "Take" than was "Put"

(See RJN, Exs. 46-53.)

IV. DYY COST SHIFTING AND FINANCIAL IMPACT

A. Cost Shifting of Watermaster Production Based Assessments

1. Judgment Administration and OBMP and Program Elements 1-9 Fixed Costs

51. The Judgment provides that "Watermaster shall have the power to levy assessments against the parties (other than minimal pumpers) based upon production…" (RJN, Ex. 1 at ¶ 53.)

52. "The expenses of administration of this Physical Solution shall be categorized as either (a) general Watermaster administrative expense, or (b) special project expense." (RJN, Ex. 1 at ¶ 54.) These two categories of expenses are a Watermaster related fixed cost as approved with the annual budget.

53. The Judgment provides that general Watermaster administrative expenses "shall include office rental, general personnel expenses, supplies and office equipment, and related incidental expense and general overhead." (RJN, Ex. 1 at ¶ 54(a).)

54. All three (3) Pools, (Appropriative, Agricultural, and Non-Agricultural) are assessed for Watermaster administrative expenses based on production. The Appropriative Pool pays the Agricultural Pool's share of administrative expenses per Section 5.4 of the Peace Agreement. (See RJN, Ex. 23 at § 5.4.)

55. Under the Judgment, special project expenses "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 Pool

Committee, or pursuant to written order of the Court." (RJN, Ex. 1 at ¶ 54(b).)

56. The annual fixed costs associated with Watermaster administration of the Optimum Basin Management Program ("OBMP") Program Elements (PE) 1 thru 9 are assessed based on production to all three (3) Pools, (Appropriative, Agricultural, and Non-Agricultural) for Watermaster administrative expenses based on production. The OBMP and its related expenses were agreed to by the Parties as memorialized in the Court Ordered "Peace Agreement" (2000) and "Peace II Agreement" (2007). (See RJN, Ex. 23 at § VII, Ex. 33, generally.)

57. This is categorized in the Watermaster Annual Assessment Package as "OBMP & Program Elements 1-9" as a fixed cost based on the approved annual budget.

58. These two categories of expenses are fixed annual costs and are assessed to Appropriative Pool parties based on each party's prior year's total groundwater production and exchanges. The determination of actual assessable production is subject to adjustments based on provisions within court ordered agreements.

59. When "Storage & Recovery Program(s)" or DYY Program production was claimed by a party, that party's annual total production and exchanges number decreases by the same amount. This then decreases the total annual production number used to determine the unit cost for fixed costs. This invariably shifts the costs onto other Parties by increasing the overall unit cost, which is applied to Parties based on their individual production amounts.

B. <u>Cost Shifting of Remaining Desalter Replenishment Obligation</u>

60. The determination of Remaining Desalter Replenishment Obligation ("RDRO") by each Party is a function of the calculated adjusted physical production. Similar to the adjustments explained above, any "Storage and Recovery Programs" production claimed by a Party reduces that Party's physical production and results in a reduced adjusted physical production.

61. The "Total Remaining Desalter Replenishment Obligation" is an annual fixed amount that must be replenished by Appropriative Pool Parties. The share applied to each Party is a function of each Party's adjusted physical production. When one Party has a reduced adjusted physical production (e.g. reduction due to DYY production claims), that Party's share of the RDRO

is proportionately reduced and shifted onto the other Parties. RDRO is met by most Parties using existing stored water rights and those water rights have financial value.

62. There was an amendment to the Peace Agreement which allows for water produced from "approved" Storage & Recovery programs to be reduced from physical production. (See RJN, Ex. 26.) However, the 2nd cycle of the DYY Program was operated based on provisions of the 2019 Letter Agreement which is not the Approved DYY Program. The Approved DYY Program consists of the provisions of the 2015 Amendment, which went through the Watermaster Approval Process. The 2nd cycle of the DYY Program does not meet the criteria established as part of the Approved DYY Program, therefore DYY Program production claims should not have been reduced from the physical production.

C. Failure to Assess All DYY Production, Including a Failure to Enforce the Exhibit G Performance Criteria, and Resulting Injury to Ontario

63. As demonstrated by the tables, below, Watermaster's failure to assess all DYY Program production, and associated failure to enforce the Exhibit G performance criteria, resulted in a windfall to CVWD and FWC, and a substantially higher assessment for Ontario. The financial impact was a combination of both a higher unit cost for Watermaster assessments and a shifting the share of Desalter Replenishment Obligation (DRO) via water rights.

64. The Exhibit G performance criteria pertaining to the shift off of imported water remain in full force and effect even after the 2019 Letter Agreement. Indeed, Exhibit G was explicitly mentioned in, and attached to, the 2019 Letter Agreement. Notwithstanding the fact that the Exhibit G performance criteria as they pertain to the use of imported water remained in effect, in the 2022/23 assessment year, Watermaster failed to enforce the Exhibit G performance criteria. Specifically, Watermaster allowed agencies to overclaim their DYY production thus exempting this additional water from production assessments.

65. In the 2022/23 assessment year, CVWD shifted off of imported water by only 13, 915 AF but claimed DYY production in the amount of 17,912, thus overclaiming 4,000 AF of DYY production.

66. In the 2022/23 assessment year, FWC shifted off of imported water by only 1,718 AF but claimed DYY production in the amount of 5,000 AF, thus overclaiming 3,282 AF.

67. Watermaster's administration of the DYY program, and failure to assess all DYY production, has resulted in the shifting of both Watermaster Fixed Costs and DRO Costs. Specifically, under the approved 2022/23 Assessment Package, Watermaster's failure to assess **all DYY production** has resulted in shifting $2,400,186 of costs from CVWD and $398,996 costs from FWC to other parties, with a corresponding increase in the financial burden born by Ontario in the amount of $693,964, as follows:

Chino Basin Parties	Actual FY Production (AF)	DYY Claimed (AF)	Total Production and Exchanges (AF)	Costs Shifted due to CVWD & FWC DYY Claimed
Cucamonga Valley Water District	27,281.10	17,912.8	9,368.3	-$2,400,186
Fontana Water Company	16,387.10	5,000.0	11,387.1	-$398,996
City of Ontario	14,390.00		14,390.0	$693,964
Other Parties	43,266.40		43,266.4	$2,105,221
TOTAL	**101,324.60**	**22,912.8**	**78,412**	**$0.00**

Notes
The total annual fixed cost is assumed at $8,643,258 and total production and exchanges is 99,715 AF for a unit cost of $86.68/AF
DYY claims decreased the total production from 122,629 to 99,715 which increased unit cost from $70.48/AF to $86.68/AF = $16.20/AF.

(RJN, Ex. 56.)

68. A subset of the above cost-shifting impacts corresponds to Watermaster's **failure to enforce the Exhibit G performance criteria as it relates to imported water**. Similar to the above, Watermaster's administration of the DYY program has resulted in the shifting of both Watermaster Fixed Costs and DRO Costs. Under the 2022/23 Assessment Package, both CVWD and FWC overclaimed their DYY production in violation of the Exhibit G performance criteria, resulting in a financial windfall to CVWD and FWC in the amounts of $391,878 and $386,979, respectively, and an additional financial burden and injury to Ontario in the amount of $193,186.

Chino Basin Parties	Actual FY Production (AF)	Imported Water Shift (AF)	DYY Claimed (AF)	DYY Incorrectly Claimed (AF)	Costs Shifted due to CVWD & FWC Incorrect DYY Claim
Cucamonga Valley Water District	27,281.10	13,913.1	17,912.8	4,000	-$391,878
Fontana Water Company	16,387.10	1,718.0	5,000.0	3,282	-$386,979
City of Ontario	14,390.00				$193,186
Other Parties	43,266.40				$585,671
TOTAL	**101,324.60**	**15,631.1**	**22,912.8**	**7,282**	**$0.00**

Notes
The total annual fixed cost is assumed at $8,643,258 and total production and exchanges is 115,347 AF for a unit cost of $74.93/AF
DYY claims decreased the total production from 122,629 to 115,347 which increased unit cost from $70.48/AF to $74.93/AF = $4.45/AF.

(RJN, Ex. 56.)

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

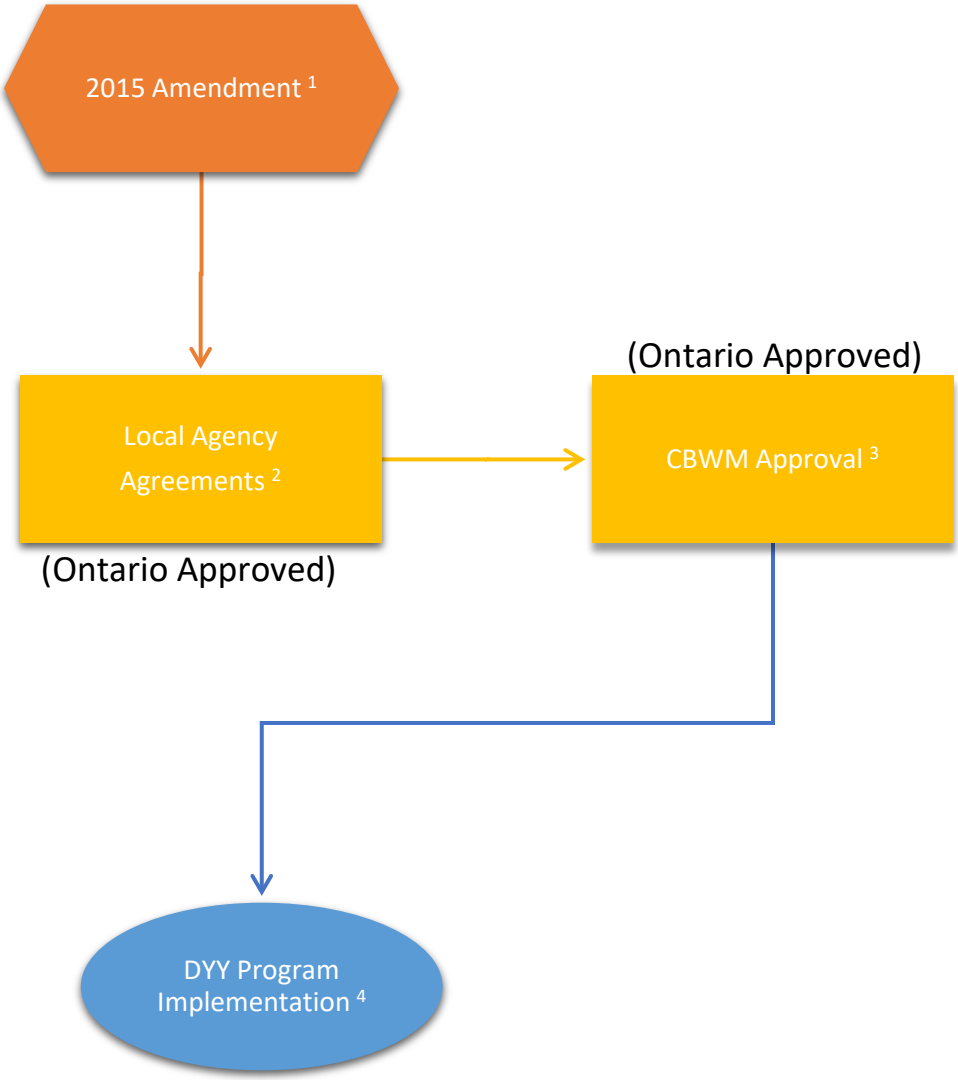
Executed on this 14th day of February, 2023, at Ontario, California.

Courtney Jones

Courtney Jones

EXHIBIT 1

2015 DYY PROGRAM AMENDMENT APPROVALS

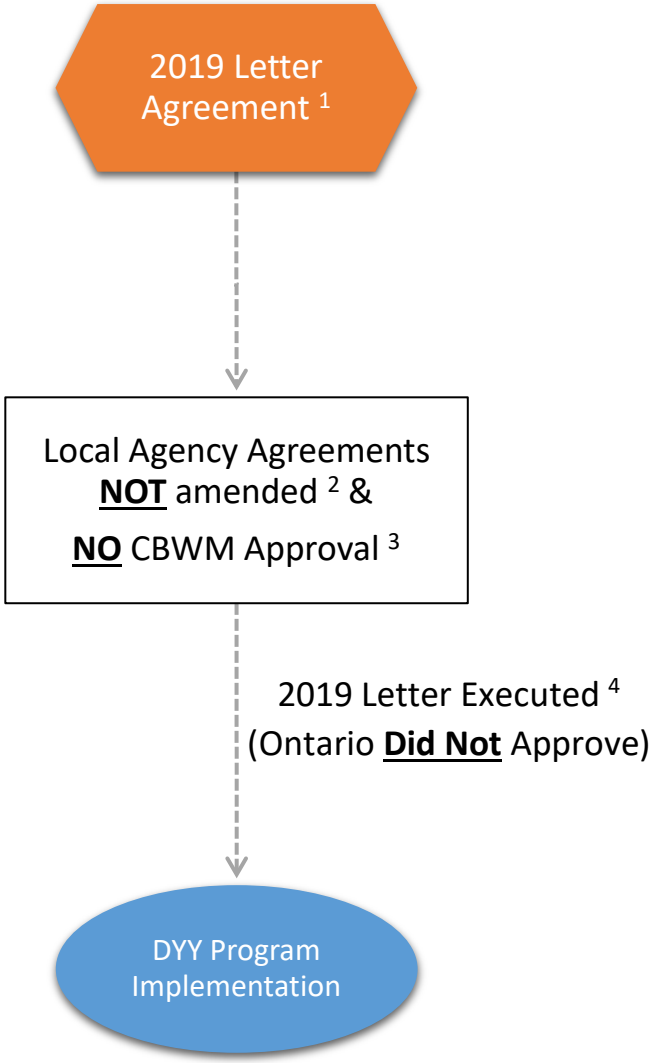


Note:

1. Consideration amongst Operating Parties for the 2015 Amendment No. 8, for amending Exhibit G of the DYY Program, started prior to June 2014.
2. Local Agency Agreements with IEUA were amended June through December 2014.
3. Approved through the Watermaster process in October 2014.
    a. Pool Meeting Item: October 9, 2014
    b. Advisory Committee Item: October 16, 2014
    c. Board Meeting Item: October 23, 2014
4. 2015 Amendment fully executed on January 23, 2015.

EXHIBIT 2

2019 LETTER AGREEMENT PROCESS

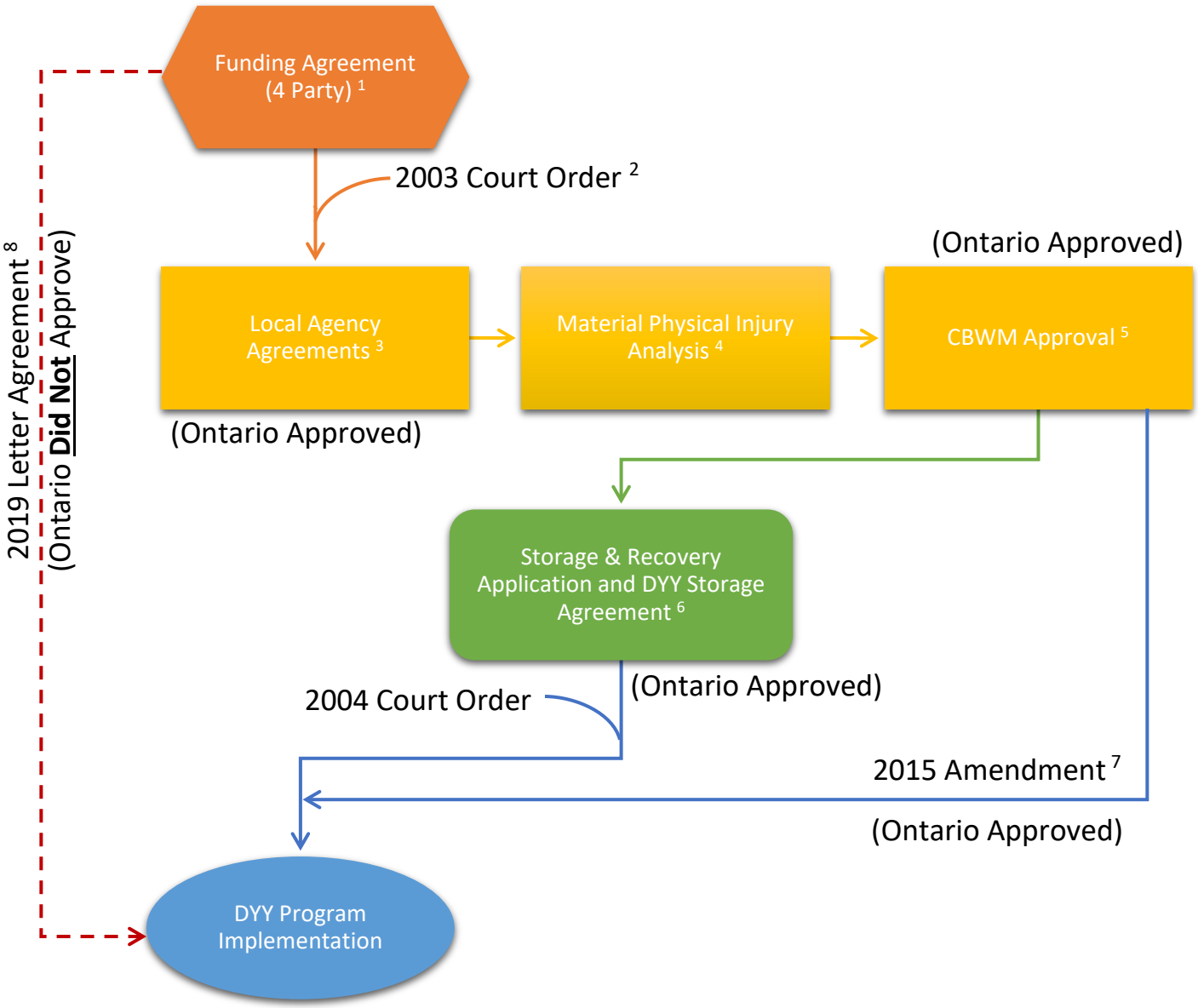


Note:

1. Consideration amongst Operating Parties for the 2019 Letter Agreement started prior to September 2018.
2. Local Agency Agreements with IEUA were not amended.
3. 2019 Letter Agreement was listed as a General Manager report item and no additional discussion provided and no approval from Pools, Advisory Committee, or Board during these meetings in September 2018.
    a. Pool Meeting Item: September 13, 2018
    b. Advisory Committee Item: September 20, 2018
    c. Board Meeting Item: September 27, 2018
4. 2019 Letter Agreement was fully executed on March 20, 2019 and signed by MWD, TVMWD, IEUA, and Chino Basin Watermaster, without Ontario approval.

EXHIBIT 3

DYY PROGRAM APPROVALS



Note:

1. Approved through Watermaster process (Pool, Advisory Committee, Board) in February 2003 and signed by MWD, TVMWD, IEUA, and Chino Basin Watermaster.
2. Ordered by the Court in June 2003, until the Court approves the Local Agency Agreements and Storage and Recovery Application, the storage and recovery program cannot be undertaken.
3. Between March 2003 & July 2003, agreements executed with IEUA & TVMWD Member Agencies
4. MPI Analysis performed in July 2003 by Wildermuth Environmental, Inc and presented in August 2003 through the Watermaster process.
5. MPI Analysis approved through Watermaster process in September 2003.
6. Approved through Watermaster process in October 2003 and March 2004, respectively.
7. The 2015 Amendment was approved through Watermaster process in October 2014, revised the performance criteria of Exhibit G, and all Local Agency Agreements were subsequently amended.
8. The 2019 Letter Agreement was not approved through the Watermaster process, did not receive Ontario's approval, and was signed by the Funding Agreement Parties in February 2019.

EXHIBIT 4

In Re: Chino Basin Watermaster)
9/13/2018 Appropriate Pool)
Meeting)
_____)

AUDIO TRANSCRIPTION

OF APPROPRIATE POOL MEETING

MEETING DATE: 9/13/2018

Transcribed by:
JOSIE C. GONZALEZ
CSR No. 13435
Job No. 10100869

In Re: Chino Basin Watermaster)
9/13/2018 Appropriate Pool)
Meeting)
_____)

Audio Transcription of Appropriate Pool Meeting, transcribed on May 13th, 2022 in San Diego, California, by JOSIE C. GONZALEZ, Certified Shorthand Reporter No. 13435, in and for the State of California.

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Start of Audio

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CHAIR LAYTON: The general manager, Peter.

MR. KAVOUNAS: A few items to bring to your attention, Madam Chair, members of the pool. There's some proposed changes to the dry year yield program operation that are being circulated. A letter has been prepared. I wanted to advise you that we do plan to sign it on behalf of Watermaster if it's necessary for acknowledgment at the -- the changes don't commit Watermaster to -- to anything. We actually don't think a letter is even required. It's just MWD offering its water at better terms to the parties, which they're entitled to do. So if there is a letter, we do plan to sign it.

CHAIR LAYTON: Peter -- sorry. Just because I don't know the proposed changes, do you -- do you happen to have a --

MR. KAVOUNAS: In a nutshell they -- they -- MWD are planning to make it so that instead of them only being able to call the water when they want to, to also allow the parties to purchase the water when they want to and still get the OMN discount.

CHAIR LAYTON: Okay.

MR. KAVOUNAS: Which is a great boon for the parties.

CHAIR LAYTON: Great. Thank you.

MR. KAVOUNAS: It's a good thing. Again, it doesn't affect Watermaster, but we are signatories to the original DYY. So if they want us to sign a letter of acknowledgement, I will go ahead and do that.

I wanted to alert you -- Item Number 2 wanted to alert you to -- CDA production has had some reduction because of water quality concerns. We don't have an updated model run at this point to be able to understand the effect, if there is any, on hydraulic control. We do plan to make the updated model run in November and will evaluate the changes and impacts, if there are any, and we'll advise you. CDA production is important. It's essential to maintain hydraulic control. So we're keeping a close eye on that.

The next item was to alert you to a business item on the --

CHAIR LAYTON: Sorry, Peter.

MR. KAVOUNAS: No worries.

CHAIR LAYTON: Going back to the water quality concerns.

MR. KAVOUNAS: Yeah.

CHAIR LAYTON: I thought the CDA wells are

supposed to be handling the water quality concerns. So I'm kind of confused what -- what's going on there.

MR. KAVOUNAS: I believe they -- they ran into -- is it -- they ran into 123 TCP that they were not prepared to treat, they're not designed to treat.

CHAIR LAYTON: Okay. Thank you.

MR. KAVOUNAS: And so they had to shut down one of the wells.

CHAIR LAYTON: All right. Thank you. I appreciate that.

MR. KAVOUNAS: Next on my agenda was to report to you that the non ag pool has an item on their agenda that isn't on your agenda as is Watermaster practice. They're reviewing their pooling plan, and I believe Todd probably had some conversations with them and he can report back to you if there's anything else.

And under other, 1 and 2 -- three things to bring to your attention. One is we're sending out a save the date on Tuesday, December 4th at 4:00 o'clock. We plan to host an event to commemorate the 40th anniversary of a judgment. So we'll be sending out invitations to boards, city councils, city managers, general managers, people that attend the pools, people that have been involved in the past but no longer involved with Chino basin. And we're looking forward to

having a keynote speaker and maybe a panel. And then the event will be followed by some form of libations, possibly dinner and that kind of thing. So I'd like to put that on your radar. Hope you can -- you can join us.

I mentioned to you earlier that we are preparing the assessment package. You can plan on getting invitation to a workshop in October. We'll probably do, as we've done before, the same format as before, and look to have it approved in November. And this would be the assessment package, again, with the existing rules which would be an assessment package that would later be revised if there is a -- and when there's a change in the rules. So it'll be based on a safe yield of 140,000. It'll be based on equal priority between land use conversion and early transfers, and everything else as has been done in the past.

And last but not least is -- there's an organization called CalDesal. I don't know if anybody heard of CalDesal. They're looking for membership. They sent us a letter asking if Watermaster would join. I plan to decline the invitation. I passed it onto IUA. And I think if IUA, Sean with its huge budget can join, it would be representing the region. I think IUA, CDA are probably a lot more qualified entities to belong to

CalDesal. I encourage any of you that are -- especially those that are big participants in the CDA to consider a membership because these organizations do need support, but I don't think Watermaster is the right organization. So I plan to decline it unless they get a strong sense that Watermaster should be a part of it. Now, I'll share this at advisory again and at the board, but my -- my instinct is to decline.

Andy, can you please go to non ag. Thank you. And that concludes my report, Madam Chair.

CHAIR LAYTON: All right. Any questions from Peter -- for Peter?

* * *

End of Audio

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REPORTER'S CERTIFICATION

I, Josie C. Gonzalez, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing audio file was reported by me stenographically to the best of my ability and later transcribed into typewriting under my direction; that the foregoing is a true record of the audio file.

IN WITNESS WHEREOF, I have subscribed my name this 22nd day of May, 2022.

Josie Gonzalez

JOSIE C. GONZALEZ

EXHIBIT 5

In Re: Chino Basin Watermaster)
9/20/2018 Advisory Committee)
Meeting)
_____)

AUDIO TRANSCRIPTION

OF ADVISORY COMMITTEE MEETING

MEETING DATE: 9/20/2018

Transcribed by:
JOSIE C. GONZALEZ
CSR No. 13435
Job No. 10100870

In Re: Chino Basin Watermaster)
9/20/2018 Advisory Committee)
Meeting)
_____)

Audio Transcription of Advisory Committee Meeting, transcribed on May 13th, 2022 in San Diego, California, by JOSIE C. GONZALEZ, Certified Shorthand Reporter No. 13435, in and for the State of California.

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Start of Audio

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CHAIR PIERSON: It appears that Joe does not want to talk any further today, so we'll move into Peter, general manager's report.

MR. KAVOUNAS: Mr. Chairman, my report -- my report is the same as last week at the pools, and there is one item I would like to highlight that's under other which is to ask you to please block on your calendars the date of Tuesday, December the 4th at 4:00 o'clock. We're planning an event to commemorate the 40th anniversary of a judgment, and it would be a great opportunity to hear some thoughtful remarks from people who have been around and know a lot of things.

CHAIR PIERSON: Very good. That's very important to identify, so everybody put down that.

* * *

End of Audio

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REPORTER'S CERTIFICATION

I, Josie C. Gonzalez, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing audio file was reported by me stenographically to the best of my ability and later transcribed into typewriting under my direction; that the foregoing is a true record of the audio file.

IN WITNESS WHEREOF, I have subscribed my name this 22nd day of May, 2022.

Josie Gonzalez

JOSIE C. GONZALEZ

EXHIBIT 6

In Re: Chino Basin Watermaster)
9/27/2018 Watermaster Board)
Meeting)
_____)

AUDIO TRANSCRIPTION

OF WATERMASTER BOARD MEETING

MEETING DATE: 9/27/2018

Transcribed by:
JOSIE C. GONZALEZ
CSR No. 13435
Job No. 10100872

In Re: Watermaster Board)
Meeting, 9/27/2018)
_____)

Audio Transcription of Watermaster Board Meeting, transcribed on May 13th, 2022 in San Diego, California, by JOSIE C. GONZALEZ, Certified Shorthand Reporter No. 13435, in and for the State of California.

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Start of Audio

* * *

CHAIR PIERSON: General manager report.

MR. KAVOUNAS: Thank you, Mr. Chairman. A few items to bring to the board's attention. The first one is you're familiar with the dry year yield program that we have with Metropolitan Water District. That is an agreement that involves Watermaster among others; IUA, Three Valleys and Conservation District. The Metropolitan Water District has proposed some changes that are favorable to the parties. We don't believe they constitute a change to the agreement, so we don't intend to bring an agreement amendment to the board. There may be an acknowledgement letter. If there is, I wanted to let you know that I would be signing that acknowledgement letter.

Second is we are aware of some impacts to CDA production due to water quality. CDA production has -- has changed especially in the west end of -- of the CDA well field, and we are looking at that to make sure the hydraulic control is not affected. We don't have any conclusions at this point in time. We're just simply letting you know that this is an item that we're tracking.

Any questions?

CHAIR PIERSON: Any questions?

MR. KAVOUNAS: Okay. And a few -- a few other items. First one is you have at your packets a -- a reminder of the save the date for the Tuesday, December 4th. We plan to have an event to commemorate the 40th judgment anniversary which was this year. We do plan to make it a substantive event with some key takeaways for people that -- reflecting on the last 40 years of Chino basin being under local management of the -- I wouldn't say the good, the bad and the ugly. I would say the good and the lessons learned. So we very much look forward to having you. Staff is working very hard to have brought outreach, and we hope to bring together a lot of very important people that need to hear that they share this amazing resource called the Chino basin.

So a couple other notes in your -- in your packets relate to personnel movements. Most notable is that Mr. Rick Hanson has decided to retire from Three Valleys. He didn't take this lightly. I think he served something like 83 years. Sorry. 38 years. So someone else is there.

So that concludes my report, Mr. Chairman.

CHAIR PIERSON: Okay. Thank you very much.

* * *

End of Audio

* * *

REPORTER'S CERTIFICATION

I, Josie C. Gonzalez, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing audio file was reported by me stenographically to the best of my ability and later transcribed into typewriting under my direction; that the foregoing is a true record of the audio file.

IN WITNESS WHEREOF, I have subscribed my name this 22nd day of May, 2022.



JOSIE C. GONZALEZ

EXHIBIT 7

From: Katie Gienger
Sent: Tuesday, July 31, 2018 3:45 PM
To: 'Elizabeth Hurst'
Subject: RE: DYY letter revisions to clarify credits.

Hi Liz,

I appreciate your recent efforts to sit down and explain the program. Based on the information provided by IEUA, I am currently neutral regarding the proposed letter agreement between IEUA and MWD. As long as there are parameters that are undecided or unclear, Ontario cannot take a position of support because we cannot know the full effects of the proposed changes. Without these details, which would best be explained and memorialized in an amendment, we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise.

Sincerely,

Katie Gienger, P.E.
Water Resources Manager
ONTARIO MUNICIPAL UTILITIES COMPANY
1425 S. Bon View Avenue
Ontario, CA 91761-4406
Phone: (909) 395-2694
E-mail: kgienger@ontarioca.gov

From: Elizabeth Hurst [mailto:ehurst@ieua.org]
Sent: Monday, July 30, 2018 4:14 PM
To: Katie Gienger
Subject: FW: DYY letter revisions to clarify credits.

Katie,
Great! Thank you for Ontario's support. We will move forward with the letter.
Best
Liz

Elizabeth Hurst
Water Resources Planner
Inland Empire Utilities Agency
A MUNICIPAL WATER DISTRICT
"Water Smart - Thinking in Terms of Tomorrow"
6075 Kimball Ave / Chino, California 91708
Tel: 909-993-1634 / Fax:
EMail: ehurst@ieua.org Website: www.ieua.org

Connect with us



From: Katie Gienger <KGienger@ontarioca.gov>
Sent: Monday, July 30, 2018 3:43 PM
To: Elizabeth Hurst <ehurst@ieua.org>
Subject: RE: DYY letter revisions to clarify credits.

Liz,

Thank you for sitting down with me to discuss! The version attached to your email seems more clear based on my understanding of the changes from our conversations.

Katie Gienger, P.E.
Water Resources Manager
Ontario Municipal Utilities Company

Sent from my phone.

On Jul 26, 2018 4:55 PM, Elizabeth Hurst <ehurst@ieua.org> wrote:
Katie,
Thank you for meeting to discuss the DYY revisions this afternoon. Per our conversation, Option 1 has been edited to the following:

- Credits will be applied if a Party chooses voluntarily to purchase stored water by increasing groundwater pumping, based upon the following:
    - The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.E of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account.
    - In the event that stored water is purchased over a 5-year period as outlined in Section XIII.C.2 of the agreement the O&M, power, and treatment credits would also apply as defined in Section VI.6 of the Agreement

The full letter is attached. Please let me know if you have any additional tweaks, and if Ontario can now support the letter.
Thank you,
Liz

Elizabeth Hurst
Water Resources Planner

Inland Empire Utilities Agency
A MUNICIPAL WATER DISTRICT

"Water Smart - Thinking in Terms of Tomorrow"
6075 Kimball Ave / Chino, California 91708
Tel: 909-993-1634 / Fax:
EMail: ehurst@ieua.org Website: www.ieua.org

Connect with us

From: Elizabeth Hurst
Sent: Thursday, July 26, 2018 9:59 AM
To: P. E. Katie Gienger (kgienger@ontarioca.gov) <kgienger@ontarioca.gov>
Subject: DYY letter revisions to clarify credits.

Hi Katie,
Here are some thoughts about how to clarify the credits etc after our discussion on Monday and my follow up conversations with MWD. Look forward to discussing with you after the TAC meeting this afternoon!
Liz

Option 1:

- If a Party chooses ~~to~~ voluntarily to purchase stored water by increasing groundwater pumping, credits will be applied based upon the following:
    - The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.~~E~~6 of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account.
    - O&M, power, and treatment credits as outlined in Section VI.6 of the Agreement would also apply ~~i~~In the event that stored water ~~is in the account upon termination of the agreement, the parties will~~ purchase~~d the water~~ over a 5-year period, as outlined in XIII.C.2 of the agreement.

Option 2:

- If a Party chooses ~~to~~ voluntarily to purchase stored water by increasing groundwater pumping, credits will be applied based upon the following:
    - The first and any instance in which an individual party's pumping is above its groundwater baseline as described in Exhibit G, the party will submit a certification for extraction from the account. Metropolitan will invoice IEUA and Three Valleys for the additional pumping at the prevailing untreated water rate at that time and will pay the O&M, power, and treatment credits as outlined in the Section VI.E~~6~~ of the Agreement. IEUA, Three Valleys, and the Watermaster will debit the purchased amounts from Metropolitan's CUP account. ~~In the event that stored water is in the account upon termination of the agreement, the parties will purchase the water over a 5-year period, as outlined in XIII.C.2 of the agreement.~~

EXHIBIT 8

From: Elizabeth Hurst <ehurst@ieua.org>
Sent: Wednesday, August 4, 2021 1:11 PM
To: Courtney Jones
Cc: Christopher T. Quach; Liza Muñoz; Ashley Alamo
Subject: RE: DYY Program Follow Up
Attachments: Ontario DYY Request.docx

Good morning Courtney,
Attached please find the information you requested. Please let us know if you have any additional questions on the program. Please note that the Agreement file is too large to send via email, but it is located on the Member Agency Portal under the DYY section.
Best,
Liz

Elizabeth Hurst
Senior Environmental Resource Planner
Inland Empire Utilities Agency
A MUNICIPAL WATER DISTRICT

From: Courtney Jones <CJJones@ontarioca.gov>
Sent: Monday, July 26, 2021 5:00 PM
To: Elizabeth Hurst <ehurst@ieua.org>
Cc: Christopher T. Quach <CQuach@ontarioca.gov>
Subject: DYY Program Follow Up

Hi Liz,

Thank you for taking the time to Chris and myself last week regarding the DYY Program and the voluntary withdrawal program per the Letter Agreement. We had a few follow up questions/requests for information as listed below following our discussion last week.

- How much did MWD recharge over the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
- Can you provide a copy of the approved Operations Plans for the parties who participated in the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
- Can you provide the baselines and the pumping reimbursement for the parties who participated in the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
- Can you provide a copy of the "Storage and Recovery Program Storage Agreement Between Chino Basin Watermaster, Inland Empire Utilities Agency, and Three Valleys Municipal Water District Regarding Implementation Of The Dry Year Yield Project" approved in 2004? This document is also referred to as the IEUA Storage Agreement by Watermaster.

Please let me know if you have any questions.

Thanks!

Courtney

Courtney Jones, P.E.
Water Resources and Regulatory Affairs Director
ONTARIO MUNICIPAL UTILITIES COMPANY
1425 S. Bon View Avenue
Ontario, CA 91761-4406
Phone: (909) 395-2640
E-mail: cjjones@ontarioca.gov

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

1. How much did MWD recharge over the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
    a. Please note that MWD does not anticipate recharging any water for fiscal year 2021/22.

	Month	Planned			Certified				
		Recharge	ASR	TAKES	Recharge	ASR	Losses	Basin Losses	TAKES***
FY 16/17	June	6,000	-	-	6,318.7	-	3.8	-	-
FY 17/18	July	6532	-	-	7,345.9	-	-	-	-
	August	6532	-	-	7,074.8	-	6.7	-	-
	September	6321	250	-	3,793.8	154.5	-	-	-
	October	2923	250	-	4,538.1	277.6	249.2	-	-
	November	1483	300	-	2,504.4	267.5	61.3	-	-
	December	1222	400	-	3,639.3	276.4	285.8	-	-
	January	1222	400	-	4,195.3	247.5	(86.0)	-	-
	February	1222	400	-	-	316.2	-	-	-
	March	1222	400	-	-	362.7	-	-	-
	April	1696	100	-	-	287.0	-	-	-
	May	4083	-	-	-	305.6	-	-	-
	June	6144	-	-	-	-	-	4.4	-
FY 18/19	May	-	-	-	-	-	-	-	-
	June	5000	350	-	4413.5	389.4	185.4		-
FY 19/20	July	6000	350	2548	4314.0	457.8	181.2	-	2421.1
	August	6000	350	2852	4803.9	434.2	201.8	-	2861.4
	September	5000	350	2206	2218.6	403.3	144.5	-	2695
	October	4000	350	1874	1842.5	277.3	105.8	-	2922.3
	November	2000	350	1280	1223.5	267.6	44.0	-	1995.0
	December	2000	350	971	1176.3	211.1	17.6	-	500
	January	-	-	844	491.7	0	7.4	-	-
	February	-	-	780	-	-	-	-	-
	March	-	-	1204	-	-	-	-	-
	April	-	-	1710	-	-	-	-	-
	May	-	-	1988	-	-	-	-	1500
	June	-	-	1743	-	-	-	32.2	2500
FY 20/21**	July	-	-		-	-	-	-	2700
	August	-	-		-	-	-	-	2500
	September	-	-		-	-	-	-	2500
	October***	-	-		-	-	-	-	5000
	November	-	-		-	-	-	-	0
	December	-	-		-	-	-	-	3500
	January	-	-		-	-	-	-	-
	February	-	-		-	-	-	-	-
	March	-	-		-	-	-	-	-
	April	-	-		-	-	-	-	2000
	May	-	-		-	-	-	-	2600
	June	-	-						2200
	Subtotal	*76,602*	*4,950*	*20,000*	*59,894.3*	*4,935.7*	*1,408.5*	*36.6*	*40,394.8*

DYY Account Balance (June 2017-Present)	
"PUTS"	
Recharged water	58,449.22
ASR injection	4,935.70
"TAKES"	
CVWD	37,894.80
Fontana Water Co.	2,500.00
TOTAL	***22,990.12***

2. Can you provide a copy of the approved Operations Plan for the parties who participated in the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
    a. Below is the approved Operations Plan for CVWD

CVWD	July	August	September	October	November	December	January	February	March	April	May	June	Total
FY19/20	2,548	2,852	2,206	1,874	1,280	971	844	780	1,204	1,710	1,988	1,743	20,000
FY20/21	2,700	2,500	2,500	5,000	-	3,500	-	-	-	1,000	2,600	2,700	22,500
FY21/22	2,700	2,100	2,300	2,100	1,900	1,900	650	650	700	1,000	1,000	1,000	18,000

b. Below is the approved Operations Plan for FWC

FWC	July	August	September	October	November	December	January	February	March	April	May	June	Total
FY19/20	-	-	-	-	-	-	-	-	-	-	-	-	-
FY20/21	-	-	-	2,500	-	-	-	-	-	-	-	-	2,500
FY21/22	1,000	1,000	1,000	1,000	-	-	150	150	150	150	200	200	5,000

3. Can you provide the baselines and the pumping reimbursement for the parties who participated in the last three fiscal years (FY 2019/20, 2020/21, and anticipated for 2021/22)?
   a. Below are the baselines for CVWD and FWC
   Please note that for the DYY the baseline is defined as the lesser of the 3-year average pumping or the sum of the party's share of the operating safe yield + the ag reallocation. Fontana was not an original member of the DYY.

CVWD	Baseline (AF)	FWC	Baseline (AF)
FY19/20	5,920.6	FY19/20	-
FY20/21	5,718.0	FY20/21	-
FY21/22	5,536.0	FY21/22	863.0

b. Below is the DYY credit for producing water from the DYY account.

	DYY Power & O&M Credit	
FY19/20	$	298.67
FY20/21	$	374.00
FY21/22	$	389.00

4. Can you provide a copy of the "Storage and Recovery Program Storage Agreement Between Chino Basin Watermaster, Inland Empire Utilities Agency, and Three Valleys Municipal Water District Regarding Implementation Of The Dry Year Yield Project" approved in 2004? This document is also referred to as the IEUA Storage Agreement by Watermaster.

   Please see attachment. This is the original program agreement. It is also posted on the Member Agency Portal under the DYY program.

EXHIBIT K

FILED-Rancho Cucamonga District
SAN BERNARDINO COUNTY
SUPERIOR COURT

JUN 0 5 2003

By _____ Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER CONCERNING GROUNDWATER STORAGE PROGRAM FUNDING AGREEMENT--AGREEMENT NO. 49960.

Date: June 5, 2003
Dept: 8
Time: 1:30 p.m.

Background

Program Element 9 of the court-approved Implementation Plan for the Chino Basin Optimum Basin Management Program ("OBMP") calls for the development and implementation of storage and recovery programs to ensure that Chino Basin water and storage capacity are put to maximum beneficial use. The initial target for the cumulative quantity of water to be held in storage is an additional 500,000 acre-feet. (Implementation Plan, Program Element 9, subdivision (c)(iv)(a).) In developing storage and recovery programs, Watermaster is to give first priority to storage and

recovery programs that provide broad mutual benefits to the parties to the Judgment. (*Id.* at subdivision (c)(iv)(b).)

Watermaster has taken the first step in developing storage and recovery programs, by negotiating a Dry Year Yield ("DYY") Program for the Basin. Watermaster seeks review, under paragraph 31 of the Judgment, of its approval on March 27, 2003, of the Groundwater Storage Program Funding Agreement No. 49960 ("Funding Agreement"). The Funding Agreement contains the financial terms for a new 100,000 acre-foot storage account for Metropolitan Water District of Southern California ("MWD").[1]

Watermaster requests an order from this Court "declaring that the [Funding] Agreement is consistent with its responsibilities under the Peace Agreement."[2] (Motion, p. 2, lines 2-3.) Watermaster asserts that the question to be decided by the Court is whether or not the Funding Agreement satisfies Watermaster's commitments under section 5.2 (c) of the Peace Agreement. Consistent with the Implementation Plan, the Peace Agreement provides, at section 5.2(c)(iv)(b), that Watermaster is to give first priority to storage and recovery programs that provide broad mutual benefits to the parties to the Judgment.

Discussion

A. Funding Agreement is not a "Storage Agreement" as that term is used in the Judgment.

The Judgment provides, at paragraph 28, that groundwater storage agreements are to contain terms that will preclude operations having a substantial adverse impact on other producers. The Judgment further provides, at Exhibit "I," that groundwater storage agreements are to contain specified information related to storage.

---

[1] MWD has three existing storage accounts.

[2] All references to "Peace Agreement" are to the Chino Basin Peace Agreement, dated June 29, 2000.

Watermaster takes the position that the Funding Agreement itself is not a "Storage Agreement," as that term is used in the Judgment. "[W]hile the [Funding] Agreement commits the parties to allocate 100,000 AF of the 500,000 AF Storage and Recovery Program to Metropolitan, the specific location and operation of the facilities necessary to accomplish this commitment must still be analyzed by Watermaster under the Material Physical Injury standard of the Peace Agreement and Rules and Regulations. This approval will take the form of Watermaster approval of the Local Agency Agreements by way of a Storage and Recovery Application filed under Article X of Watermaster's Rules and Regulations.

"The [Funding] Agreement itself contemplates the necessity of such further Watermaster approval. The Agreement contains the provisions that: 'Watermaster reserves the right to approve the location and amount of storage and extraction pursuant to this Agreement, in accordance with the Judgment, OBMP and its policies applicable to the Judgment Parties.' [Citation.]" (Motion, p. 8, lines 11-22.) The Court is concerned that the quoted language does not clearly state that a Storage Agreement allowing use of the 100,000 acre-feet storage account contemplated by the Funding Agreement has not yet been completed and must still be approved by both Watermaster and this Court. As noted, Watermaster indicates that approval of a Storage Agreement will be in "the form of Watermaster approval of the Local Agency Agreements by way of a Storage and Recovery Application filed under Article X of Watermaster's Rules and Regulations." It is not clear to the Court how or in what form this approval process will be conducted. However, it is clear that until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application, or some equivalent approval process is completed, the storage and recovery program cannot be undertaken. The Judgment mandates that the Funding Agreement be reviewed in this context.

///

///

B. The Court's review of the evidence is "de novo."

Under paragraph 31 of the Judgment the Court's review of any Watermaster action or decision is "de novo." Watermaster's findings, if any, may be received in evidence at the hearing but shall not constitute presumptive or prima facie proof of any fact in issue. Of course, this does not mean that Watermaster's decision is entitled to no weight at all. (*Cf. Fukuda* v. *City of Angels* (1999) 20 Cal. 4th 805, 817.) The key is that the Court looks at the evidence anew.

C. The weight of the evidence supports the finding of "broad mutual benefit."

As noted in the introduction, both the Implementation Plan for the OBMP and the Peace Agreement, which facilitates implementation of the OBMP, provide criteria to guide Watermaster in evaluating a storage and recovery program. "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..." (Implementation Plan, Program Element 9, subdivision (c)(iv)(b); Peace Agreement, section 5.2 (c)(iv)(b).)

In support of its motion, Watermaster offers a copy of the Funding Agreement itself (Exhibit 1), copies of the two Watermaster staff reports, upon which the Advisory Committee and Board's decisions were based (Exhibits 2 & 3), and copies of previous storage agreements with MWD (Exhibits 4-6). The Court has received no objections to the evidence, nor any opposition to the motion. The evidence submitted establishes the following.

In November 2000, MWD issued a request for proposals for groundwater storage programs using funds from Proposition 13. In January 2001, Watermaster and IEUA jointly submitted a proposal to MWD for a groundwater conjunctive use storage program. In April 2001, MWD approved the proposal, which includes funding in the amount of $27.5 million to be used for new production facilities--wells and wellhead

treatment facilities. The new facilities will provide new pumping capacity for participating parties. Of the $27.5 million, $9 million will come from the California Department of Water Resources ("DWR"), using Proposition 13 funds, and $19.5 million will come from MWD. MWD will advance $1.6 million to IEUA for costs associated with CEQA compliance and preliminary engineering studies, including modeling of the Basin. CEQA approvals were completed in December 2002.

The term of the storage program is 25 years, with optional five-year renewal terms, up to a maximum term of 50 years. The storage target for the program is 100,000 acre-feet per year, which is to be stored by MWD in wet years. The annual yield target is 33,000 acre-feet per year, which is to be produced from the Basin in times of imported water shortages, using the new facilities. A key point in the program is that MWD will allow local control and use of the facilities to be constructed. Hence, the new facilities will provide infrastructure that will be of general benefit to Basin pumpers.

Several Appropriative Pool members will be participating in the Program: Cities of Chino, Chino Hills, Ontario, Pomona[3], Upland, and the Cucamonga County and Monte Vista Water Districts. San Antonio Water Company, Fontana Water Company and Jurupa Community Services District have also initiated negotiations concerning their participation. When MWD delivers in-lieu water into the new storage account, that water is to be provided to the participating entity at no cost, resulting in a deferred water cost. When MWD calls for extraction of the water, it will pay the operation and maintenance costs of the extraction facilities attributed to its use of the facilities, and also will pay the unit electrical cost for pumping the stored water. Further, MWD will pay an administrative fee of $132,000 to offset the Watermaster staff time necessary to administer the program, which will require detailed record keeping. The administrative fee will be escalated using the lesser of 2.5% or the consumer price index.

[3] Three Valley Municipal Water District is a party to the Funding Agreement to facilitate the City of Pomona's participation.

The benefits, costs and obligations of the Funding Agreement will be passed on to the participating entities. Further, the DYY Program will have general benefits for Basin Pumpers. The DYY Program benefits were addressed in Watermaster's Dry Year Yield Project Memorandum ("DYY Memorandum"), dated February 13, 2003 (Exhibit 2); they are listed on page 6 of the DYY Memorandum. Black and Veatch estimated cash flows for benefits and costs over the life of the program, and prepared a financial analysis (Attachment III to the DYY Memorandum), which quantifies program benefits. Black and Veatch also prepared a conceptual facilities report related to the DYY Program (Attachment XII to the DYY Memorandum). Black and Veatch concludes the DYY Program "will effectively meet overlying demands via in-lieu water deliveries. Furthermore, the program meets the goals of the Basin's ...(OBMP), which are: Enhance basin water supplies [¶] Protect and enhance water quality [¶] Enhance management of the basin [¶] Equitably finance the OBMP" (Attachment XII, p. 5.)

Ruling

The Court finds that the weight of the evidence supports Watermaster's finding that the DYY Program, as described in the Funding Agreement, will provide broad mutual benefits to the parties to the Judgment.

The Court further finds that Watermaster's approval of the Funding Agreement is consistent with its responsibilities under the Peace Agreement, which, in turn, facilitates implementation of the court-approved OBMP.

Dated: June 5, 2003

J. Michael Gunn

J. Michael Gunn, Judge

Watermaster Files

FILED-Rancho Cucamonga District
SAN BERNARDINO COUNTY
SUPERIOR COURT

JUN 12 2003

By Maria L. DeVinney Deputy

CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On June 11, 2003 I served the following that were heard on:

June 5, 2003,1:30 p.m., Dept. R8

A. Order Concerning Groundwater Storage Program Funding Agreement – Agreement No. 49960

B. Order Receiving Watermaster's 25th Annual Report and Status Reports Nos. 5 & 6; Order Confirming Intervention of Niagara Bottling Company

/_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:
Attorney Service List
Mailing List 1

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

/___/ BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/_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 June 11, 2003 in Rancho Cucamonga, California.

Mary Staula

Mary Staula
Chino Basin Watermaster

Attorney Service List **Updated 6/11/03**

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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

JUN 24 2004

BY Wanda Lewis
DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER APPROVING STORAGE AND RECOVERY PROGRAM STORAGE AGREEMENT RE IMPLEMENTATION OF DRY YEAR YIELD STORAGE PROJECT

Date: June 24, 2004
Dept: R8
Time: 1:30 p.m.

///

Background

On July 13, 2000, this Court ordered Chino Basin Watermaster ("Watermaster") to adopt the goals and plans of the Optimum Basin Management Program ("OBMP") Phase I Report, dated August 19, 1999, (Phase I Report) and to implement them through the Implementation Plan for the OBMP for the Chino Basin ("Implementation Plan"), in a manner consistent with the Chino Basin Peace Agreement, dated June 29, 2000, ("Peace Agreement") and the Implementation Plan. The goals of the Phase I

Report include the development of conjunctive-use programs, to optimize the use of the Chino Basin for in-basin producers and the people of California. (Phase I Report, p. 3-3.) In furtherance of this goal, the Implementation Plan provides for the development of storage and recovery programs.

In carrying out the Implementation Plan, Watermaster negotiated a Dry Year Yield Program ("DYY Program") for Chino Basin. On June 5, 2003, this Court found that the DYY Program, as described in the Groundwater Storage Program Funding Agreement No. 49960 ("Funding Agreement"), will provide broad mutual benefits to the parties to the Judgment and is consistent with Watermaster's responsibilities under the Peace Agreement, which facilitates implementation of the OBMP. Watermaster now seeks court approval of the "Storage And Recovery Program Storage Agreement Between Chino Basin Watermaster, Inland Empire Utilities Agency and Three Valleys Municipal Water District Regarding Implementation of the Dry Year Yield Project" ("DYY Storage Agreement"). The DYY Storage Agreement authorizes Inland Empire Utilities Agency, Three Valleys Municipal Water District and many of their retail agencies to participate with Metropolitan Water District of Southern California ("MWD") in the use of a maximum of 100,000 acre-feet of storage space in Chino Basin, through in-lieu recharge.

Discussion

"[F]ull jurisdiction, power and authority are retained and reserved to the Court" to enable the Court "to make such further or supplemental order or directions as may be necessary or appropriate" to interpret, enforce or carry out the Judgment. (Judgment, ¶ 15.) Subsurface storage space in a groundwater basin is a public resource, which must be put to beneficial use under Article X, section 2 of the California Constitution. (*Central and West Basin Water Replenishment District* v. *Southern California Water Company* (2003) 109 Cal.App.4th 891, 905, mod. 110 Cal.App.4th 352.)

Groundwater storage in Chino Basin is directed and controlled by Watermaster. The Judgment provides that no use shall be made of the storage capacity of Chino Basin except pursuant to written agreement with Watermaster. (Judgment, ¶ 12.) The Judgment further provides that the reservoir capacity of the Basin may be utilized for storage and conjunctive use of supplemental water, if undertaken under Watermaster control and regulation. (Judgment, ¶ 11.) Finally, the Judgment provides that agreements for storage "shall first be approved by written order of the Court" and must include terms that will "preclude operations which will have a substantial adverse impact on other producers." (Judgment, ¶ 28.)

Currently, there are three types of storage accounts: Excess Carry-Over Storage, Local Storage of Supplemental Water, and Non-Party Storage Accounts. According to Watermaster's 26th Annual Report, at the end of fiscal 2002-2003 there were 108,178.61 acre-feet in Excess Carry-Over Storage and 81,179.810 acre-feet in Local Storage of Supplemental Water. Non-Party Storage consists of MWD's three existing storage accounts: Cyclic Storage Account (32,700 acre-feet), Trust Storage Account (13,100 acre-feet), and Short-Term Conjunctive Use Account (no water currently stored.) A fourth account will be created under the DYY Storage Agreement. Once the DYY Storage Account is created, the Trust Storage Account will be closed and water currently stored in that account will be transferred to the DYY Storage Account and accounted for in that account. In addition, Watermaster anticipates that no new water will be placed into the Cyclic Storage Account and the existing stored water will be gradually removed, until it is empty.

The Implementation Plan provides that the amount of storage that can safely be used by producers and Watermaster is about 500,000 acre-feet, including water in existing storage accounts. Storage in excess of this amount will preemptively require mitigation. (Implementation Plan, p. 38.) Under the terms of the DYY Storage Agreement, there will be no more than 100,000 acre-feet of supplemental water stored in the Basin. Existing storage is approximately 235,000 acre-feet. Hence, the

proposed storage is well within the estimated safe storage capacity of the Basin, as defined in the Implementation Plan.

The DYY Storage Agreement calls for the development of Annual Operating Plans, which will provide estimated schedules and locations for the delivery of all water into and out of storage, on a monthly basis, for the upcoming fiscal year. The Annual Operating Plan is to be submitted to Watermaster for approval and is to have sufficient detail to allow Watermaster to assess the potential for any adverse impacts on producers. Pursuant to Judgment paragraph 28, Watermaster may not approve an Annual Operating Plan that will have a substantial adverse impact on producers.

No contests were filed to the application for approval of the DYY Storage Agreement. All three pools unanimously approved the DYY Storage Agreement on March 16, 2004. The Advisory Committee and Board of Directors unanimously approved the DYY Storage Agreement on March 25, 2004.

Good cause appearing therefore, the Court finds that the DYY Storage Agreement is consistent with the Judgment and Implementation Plan, and is unlikely to have any adverse impacts on a party to the Judgment. Watermaster's Motion for Approval of the DYY Storage Agreement is hereby GRANTED; the DYY Storage Agreement is hereby approved for the storage of a maximum of 100,000 acre feet. Starting with the OBMP quarterly status report covering the time period ending June 30, 2004, Watermaster shall include a report of operations under the DYY Storage Agreement.

///

Dated: June 24, 2004

J. Michael Gunn

J. Michael Gunn, Judge

CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On June 24, 2004 I served the following:

ORDER APPROVING STORAGE AND RECOVERY PROGRAM STORAGE AGREEMENT RE IMPLEMENTATION OF DRY YEAR YIELD STORAGE PROJECT

/_x_/ BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list:
Mailing List 1

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

/___/ BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/_x_/ BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 24, 2004 in Rancho Cucamonga, California.

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EXHIBIT M

ROTATION SCHEDULE FOR REPRESENTATIVES TO THE WATERMASTER

Proposed Representation of the Parties to the Judgment

	APPROPRIATORS			NON-AG	AGRICULTURAL POOL		MUNICIPALS		
	Big	*Medium*	*Small*						
Jan – 16	Ontario	CVWD	Upland	Industry	State	Dairy	IEUA	TVMWD	WMWD
Jan – 17	FWC	CVWD	Upland	Industry	State	Crop	IEUA	TVMWD	WMWD
Jan – 18	FWC	Chino	Minor Rep	Industry	Dairy	Crop	IEUA	TVMWD	WMWD
Jan – 19	Pomona	Chino	Minor Rep	Industry	Dairy	Crop	IEUA	TVMWD	WMWD
Jan – 20	Pomona	FUWC	Chino Hills	Industry	Dairy	State	IEUA	TVMWD	WMWD
Jan – 21	Jurupa	FUWC	Chino Hills	Industry	Crop	State	IEUA	TVMWD	WMWD
Jan – 22	Jurupa	MVWD	Minor Rep	Industry	Crop	State	IEUA	TVMWD	WMWD
Jan – 23	Ontario	MVWD	Minor Rep	Industry	Crop	Dairy	IEUA	TVMWD	WMWD
Jan – 24	Ontario	CVWD	Upland	Industry	State	Dairy	IEUA	TVMWD	WMWD
Jan – 25	FWC	CVWD	Upland	Industry	State	Dairy	IEUA	TVMWD	WMWD
Jan – 26	FWC	Chino	Minor Rep	Industry	State	Crop	IEUA	TVMWD	WMWD
Jan – 27	Pomona	Chino	Minor Rep	Industry	Dairy	Crop	IEUA	TVMWD	WMWD
Jan – 28	Pomona	FUWC	Chino Hills	Industry	Dairy	Crop	IEUA	TVMWD	WMWD
Jan – 29	Jurupa	FUWC	Chino Hills	Industry	Dairy	State	IEUA	TVMWD	WMWD
Jan – 30	Jurupa	MVWD	Minor Rep	Industry	Crop	State	IEUA	TVMWD	WMWD

The noted rotation schedule perpetuates indefinitely until and unless there is a Court approved change.

Approved by the Appropriative Pool

November 17, 2015

EXHIBIT N

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 Watermater'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.

(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) and7.4(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

(vii) Santa Ana River Water Co. 31 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

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 is 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

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.

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 _____

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: April 24, 2008

Party: Non-Agricultural Pool

By _____

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: 12/11/07

Party: CITY OF UPLAND

By _____
ROBB QUINCEY
CITY MANAGER

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IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

Party: TVMWD

By

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: San Antonio Water Company

By Tom Thomas
Tom Thomas
President

Ken Willis
Secretary

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:

Party: Cucamonga Valley Water District

By _____

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:

Party: WESTERN MWD

By _____

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: December 7, 2007

Party: FONTANA UNION WATER COMPANY

By _____
Robert A DeLoach, President

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: 12/12/07

Party: West End Consolidated Water Co

By Tom R. Thomas
Tom R. Thomas

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: Dec. 19, 2007

Party: Ag Pool - Watermaster

By: Richard Gleason

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: CITY OF CHINO

By

ATEST:

DATED: 2-21-08

Lenna J. Tanner, 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;

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

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

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

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

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

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

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

References

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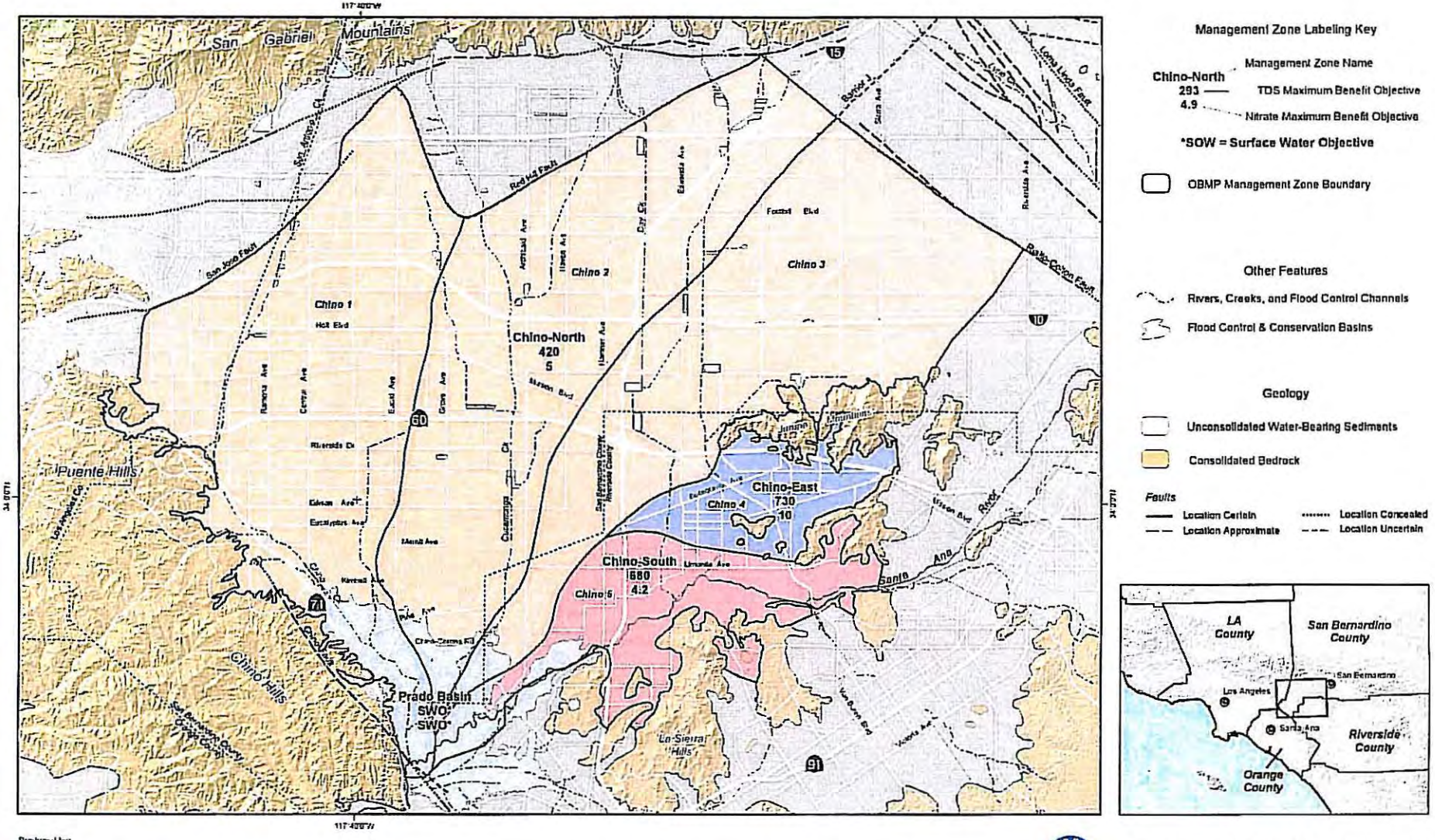
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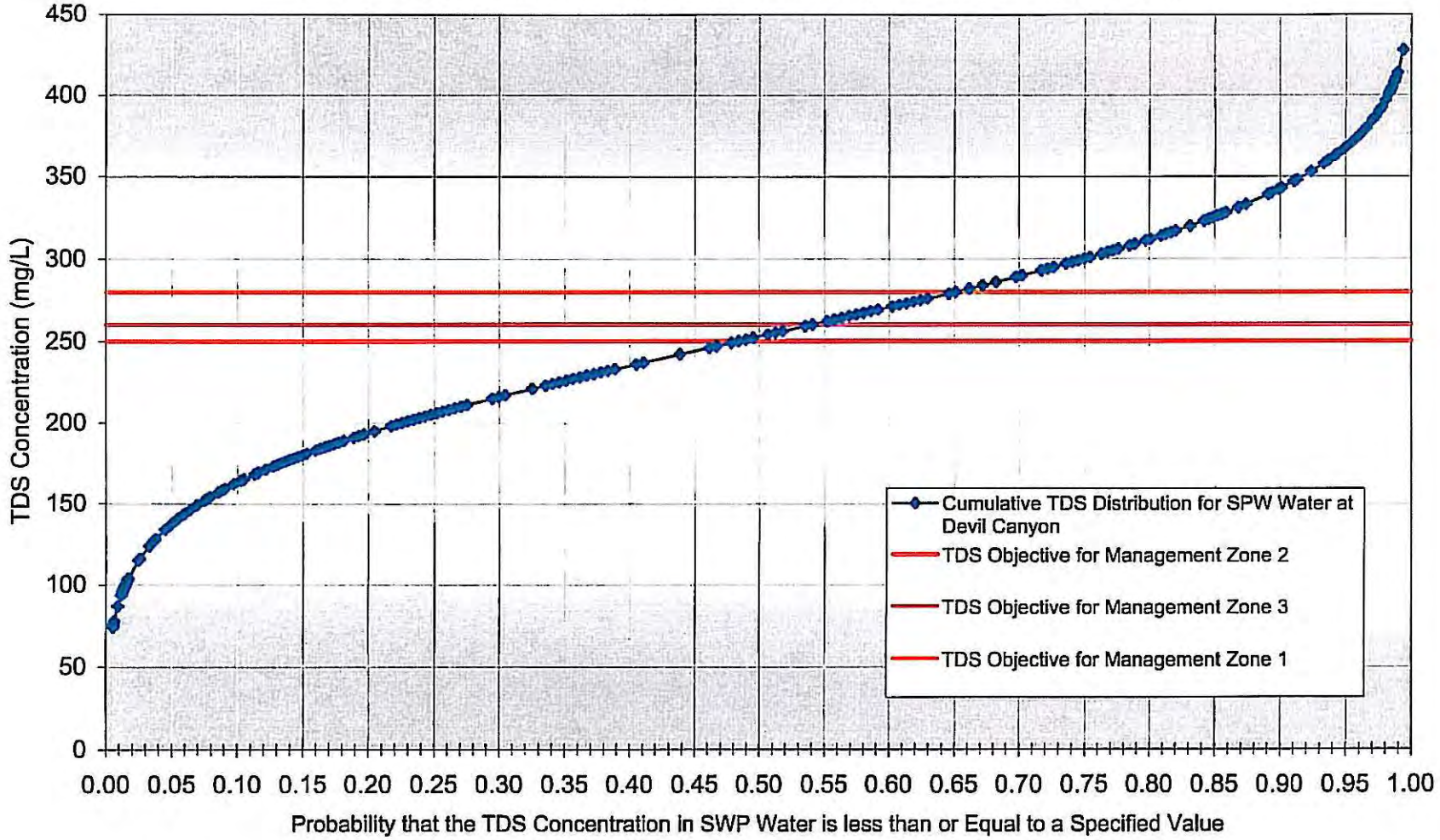
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Chino Basin Optimum Basin Management Program
Peace II Amendment (2007)

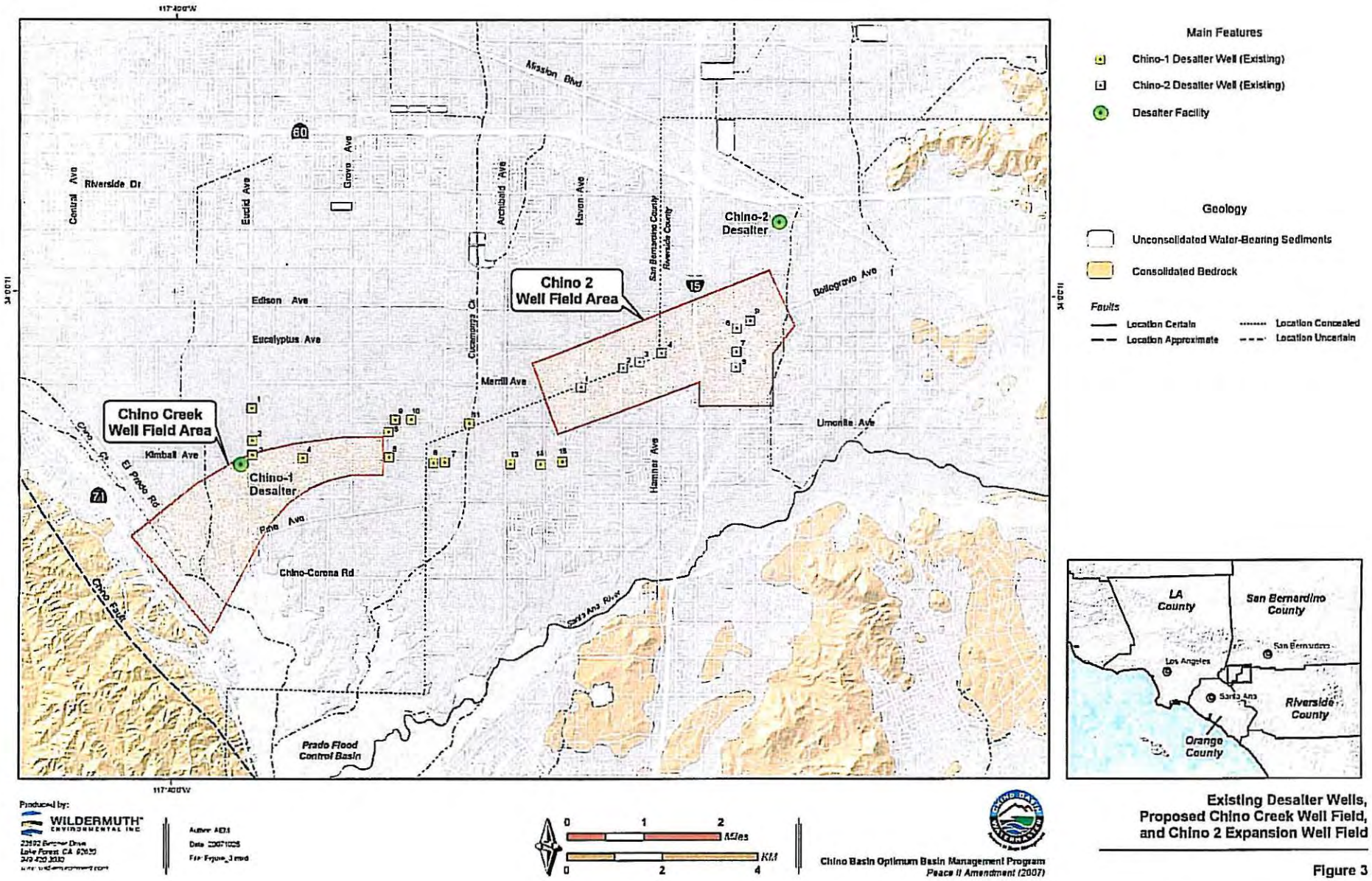
Comparison of OBMP Management Zones and RWQCB Basin Plan Management Zones

Figure 1

Figure 2
Historical TDS Concentration in State Water Project Water at Devil Canyon



20070701Figure 2 Devils_TDS.xls – Figure 2 Project Description



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Chino Basin Optimum Basin Management Program
Peace 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.[1] 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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[1] 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

$$Value = \sum_{t=0}^{\infty} (1+r)^{-t} \left[B(y_t) - C(x_t, y_t) \right],$$

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.[2] 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.[3] 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

[2] Alternatively, recycled water would have to be desalted prior to recharge. Costs are not available at this time for this option.

[3] 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.[4] In the high rate scenario, this price was assumed to grow at the same rate of inflation as

[4] 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.[5] 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

[5] 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.[6] 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.[7]

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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[6] 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

[7] 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.[8] 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.

[8] 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

	High Rate	*Low Rate*
Straightline	388.6	283.1
Most Rapid	391.4	288.4

Gain Over Baseline: SAR Inflow Unallocated

	High Rate	*Low Rate*
Straightline	436.2	341.9
Most Rapid	438.8	347.7

Source: Calculated.

Table 2: Production, Operating Yield and Stormwater Recharge

Year	*Total Production*	*Chino Desalter Production*	*Operating Yield*	*New Stormwater Recharge*
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

Year	*Normal Production Replenishment Obligation*	*Chino Desalter Replenishment Obligation*	*MWD Replenishment*	*Recycling Replenishment*
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

Year	*Annual Overdraft*	*Cumulative Overdraft*	*SAR Inflow*
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

Year	*Normal Production Replenishment Obligation*	*Chino Desalter Replenishment Obligation*	*MWD Replenishment*	*Recycling Replenishment*
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 Unllocated

Year	*Total Replenishment Obligation*	*MWD Replenishment*	*Recycling Replenishment*
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

Year	*Annual Overdraft*	*Cumulative Overdraft*	*SAR Inflow*
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

Year	*Normal Production Replenishment Obligation*	*Chino Desalter Replenishment Obligation*	*MWD Replenishment*	*Recycling Replenishment*
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 Unllocated

Year	*Total Replenishment Obligation*	*MWD Replenishment*	*Recycling Replenishment*
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

Year	*Tier 2 Price*	*Replenishment Price*	*Recycling Price*
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

Year	*Tier 2 Price*	*Replenishment Price*	*Recycling Price*
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

Program Size	*Losses*	*Present Value - High Rate*	*Present Value - Low Rate*
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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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$)		
	Peace I vs. Baseline	*Peace II vs. Peace I*	*Peace II vs. Baseline*
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
Total	**$182,133**	**$722,530**	**$904,663**

	Net Benefit per Acre-Foot (2007$)		
	Peace I vs. Baseline	*Peace II vs. Peace I*	*Peace II vs. Baseline*
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
Overall Average	**$19.84**	**$78.69**	**$98.53**

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.[1] 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.[2]

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

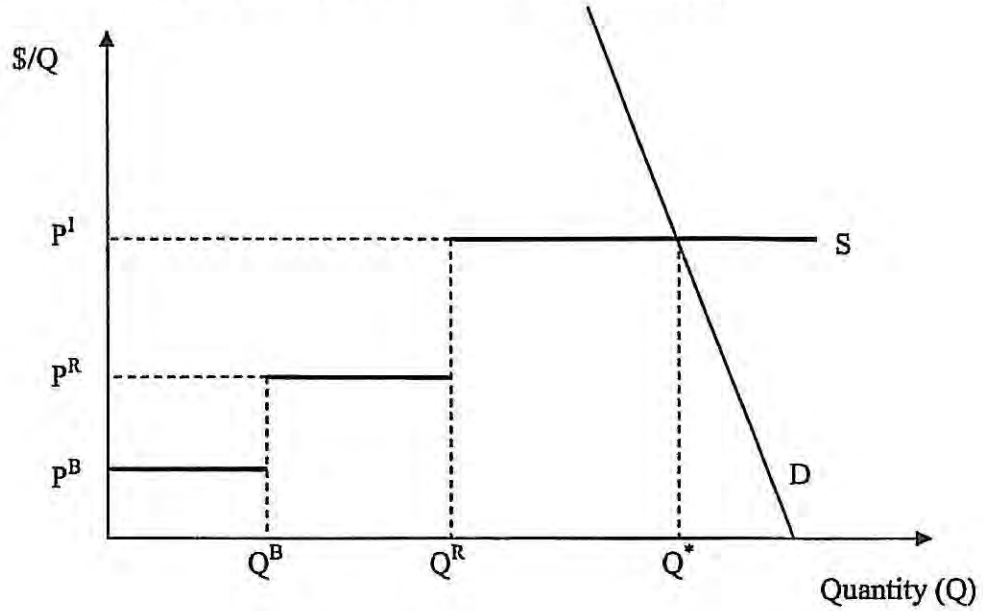
[1] Consumer demand for Basin water, which is met through some combination of Basin supply and water imports, is calculated for each agency as Urban Water Demand less available surface water and other groundwater supplies. Over the 2007-2030 period of study, the City of Ontario and Cucamonga Valley Water 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.

[2] 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.[3] 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.)

[3] 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.

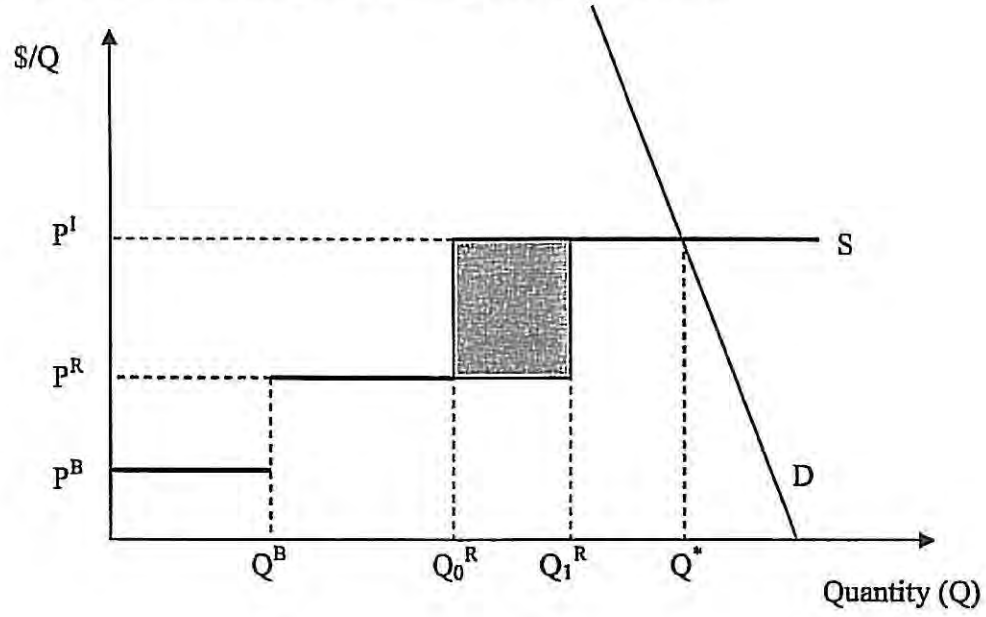
The equilibrium quantity of water consumed is given by the intersection of supply and demand, which occurs at the quantity Q* and the price P^I. The key to characterizing the distribution of benefits from policies that increase the effective yield from the Basin, either by expanding Basin safe yield 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 meet 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.[4]

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.

[4] 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

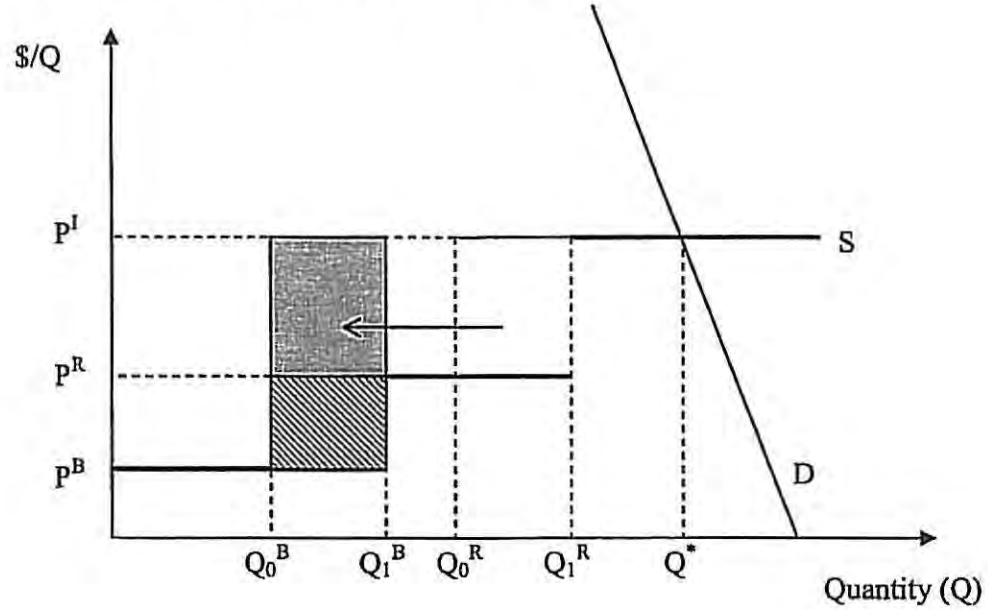


Among individual agencies in the Basin, the benefit of an increase in recharge capacity is distributed exclusively to agencies on the extensive margin of water supply. For this reason, the market return from an increase in recharge capacity can be distributed equally across agencies only in the case 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.[5] 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.[6] 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.[7] 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

[5] 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 $P^I - P^B$).

[6] 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.

[7] 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.)

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.[8] 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.[9] 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

[8] 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.

[9] 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.[10] 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.[11] All cost components thereafter are assumed to increase at a rate of 4.5 percent.

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[10] 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.)

[11] 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.[12] 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.[13] 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.[14] 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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[12] IEUA Urban Water Management Plan (2005), Tables 3-10 and 7-1.

[13] Watermaster, Fiscal Year 2006-2007 Final Assessment Package, Land Use Conversion Summary (p10): http://www.cbwm.org/docs/financdocs/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).

[14] 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.[15] 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

[15] 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.[16] 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*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.[17]

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.[18] 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,

[16] Implementation Plan: Optimal Basin Management Plan for the Chino Basin, p13: http://www.cbwm.org/docs/legaldocs/Implementation_Plan.pdf.

[17] 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.

[18] 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.[19]

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

[19] 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.[20] 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.

[20] 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

	Appropriator								
Component	Chino	Chino Hills	Ontario	Upland	Cucamonga	Monte Vista	Jurupa	Pomona	**Total**
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**
Residual Demand	*26,200*	*24,700*	*66,600*	*13,500*	*64,100*	*14,100*	*35,850*	*28,380*	**273,430**
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**
Available Supply	*17,950*	*8,709*	*25,033*	*4,727*	*6,600*	*8,052*	*33,896*	*18,587*	**123,554**
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**
Import Demand	*7,979*	*14,860*	*38,616*	*7,901*	*53,461*	*5,622*	*275*	*9,095*	**137,809**
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.[21] 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

[21] Watermaster, Fiscal Year 2006-2007 Final Assessment Package, Land Use Conversion Summary (p10): http://www.cbwm.org/docs/financdocs/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,[22] 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.[23] 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.[24] It is assumed that there is no storage loss for units of water placed in storage.[25] 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 covert 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

[22] Personal communication with IEUA staff.
[23] Personal communication with Watermaster staff.
[24] IEUA Urban Water Management Plan (2005), Table 6-5.
[25] 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*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.[26]

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 redistributional 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.

[26] 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.[27]

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.[28]

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

[27] 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.

[28] 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.[29]

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.

[29] 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/financdocs/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

	Appropriator								
Component	Chino	Chino Hills	Ontario	Upland	Cucamonga	Monte Vista	Jurupa	Pomona	**Total**
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**
Residual Demand	*26,200*	*24,700*	*66,600*	*13,500*	*64,100*	*14,100*	*35,850*	*28,380*	**273,430**
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	10,558	2,173	7,210	1,467	2,460	2,553	16,658	5,769	**48,848**
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**
Available Supply	*21,001*	*9,604*	*29,744*	*6,308*	*12,032*	*10,234*	*39,074*	*20,349*	**148,346**
Net Storage	428	288	771	-107	1,058	133	0	225	**2,797**
Transfers	726	1,985	4,854	914	6,854	516	-3,224	1,065	**13,690**
Import Demand	*4,901*	*13,399*	*32,773*	*6,171*	*46,272*	*3,483*	*0*	*7,192*	**114,191**
Local Storage	3,713	10,783	26,326	5,137	37,191	2,761	0	5,737	**91,649**
Replenishment Purchases	1,353	3,700	9,050	1,704	12,778	962	0	1,986	**31,533**
Tier 2 Purchases	3,548	9,699	23,723	4,467	33,494	2,521	0	5,206	**82,658**
Actual Production	21,653	11,373	34,071	7,119	18,142	10,695	35,850	21,299	**160,203**
Watermaster Assessments	$849	$401	$1,258	$267	$629	$411	$1,353	$795	**$5,963**

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).

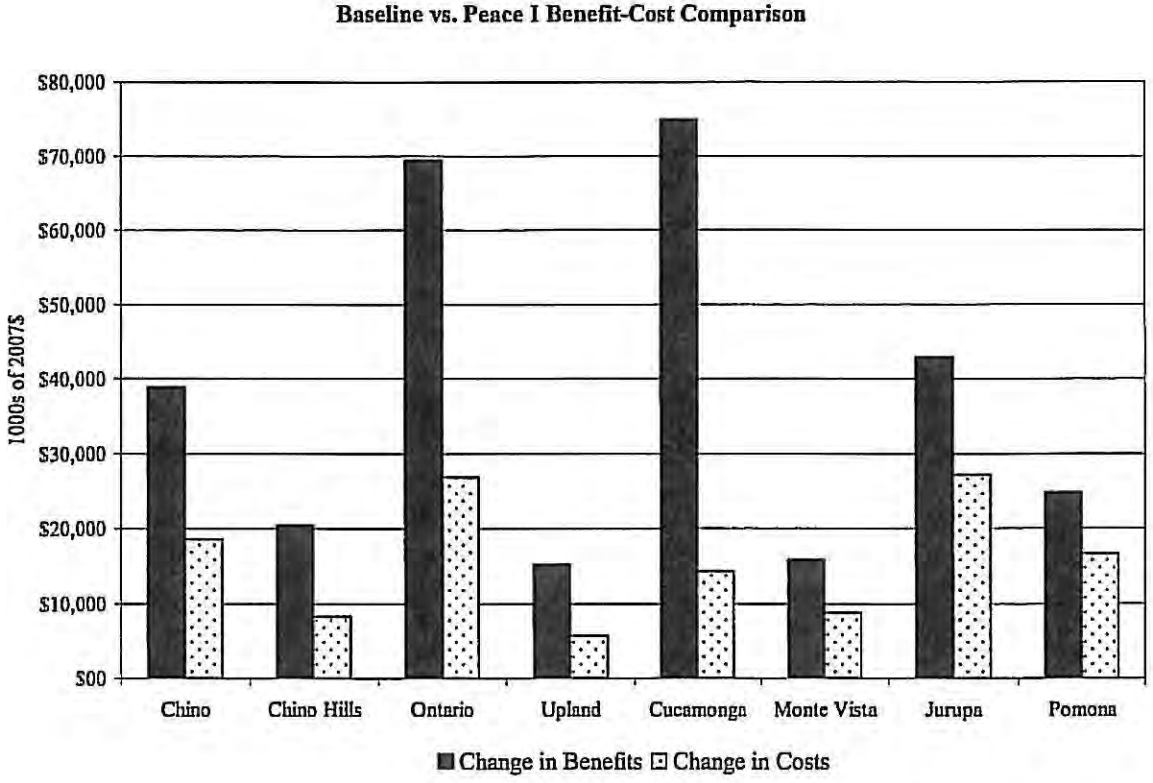


Figure 1

Distribution of Net Benefit, Peace I vs. Baseline ($/per AF)

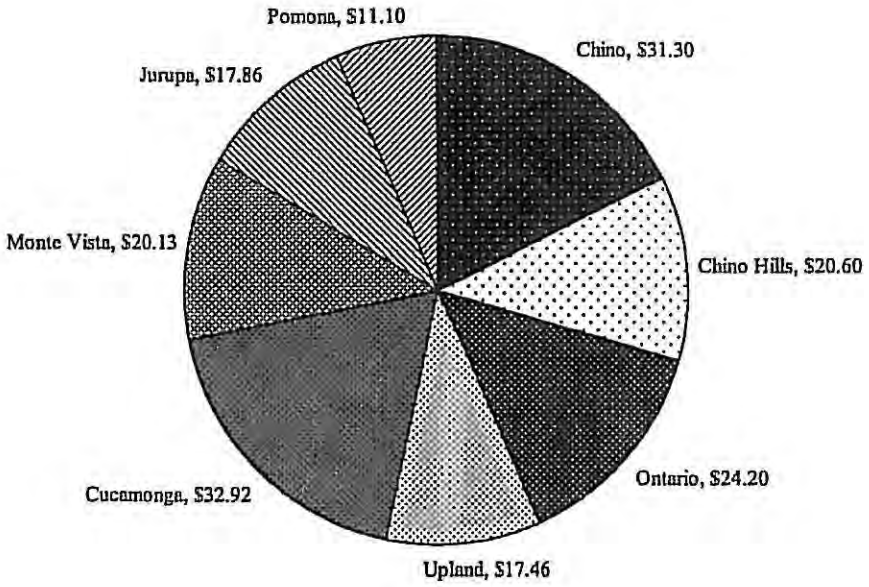


Figure 2

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.[30]

The use of significant quantities of recycled water is made possible in the Basin by the attainment of hydraulic control.[31] 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.[32, 33] The recycled water price charged by

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[30] Watermaster, Fiscal Year 2006-2007 Final Assessment Package, Land Use Conversion Summary (p10): http://www.cbwm.org/docs/financdocs/Assessment%20Package%20FY%202006-2007%20Final.pdf.

[31] Personal correspondence with IEUA staff.

[32] 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).

[33] 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.[34]

The amount of transfer of overlying non-agricultural water to the appropriative 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.[35] This amount of water is allocated proportionally in four equal installments over the four-year period 2007-2010 to agencies in the appropriative 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.[36]

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.[37] 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.

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[34] IEUA, Operating and Capital Program Budget, Fiscal Year 2007/08, Volume 1 (July 2007), p231.
[35] 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.
[36] Non-Binding Term Sheet, item IX.C.
[37] 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.[38]

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.[39] 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.[40] 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

[38] Non-Binding Term Sheet, Item VI.B.1.
[39] Non-Binding Term Sheet, item VII.A.
[40] 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.[41] 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

[41] 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.[42]

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.

[42] 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

	Appropriator								
Component	Chino	Chino Hills	Ontario	Upland	Cucamonga	Monte Vista	Jurupa	Pomona	**Total**
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**
Residual Demand	*26,200*	*24,700*	*66,600*	*13,500*	*64,100*	*14,100*	*35,850*	*28,380*	**273,430**
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**
Available Supply	*29,248*	*15,796*	*44,482*	*8,871*	*33,336*	*11,990*	*42,181*	*22,294*	**208,199**
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**
Import Demand	*0*	*6,190*	*15,619*	*3,087*	*21,223*	*1,520*	*0*	*4,347*	**51,986**
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.

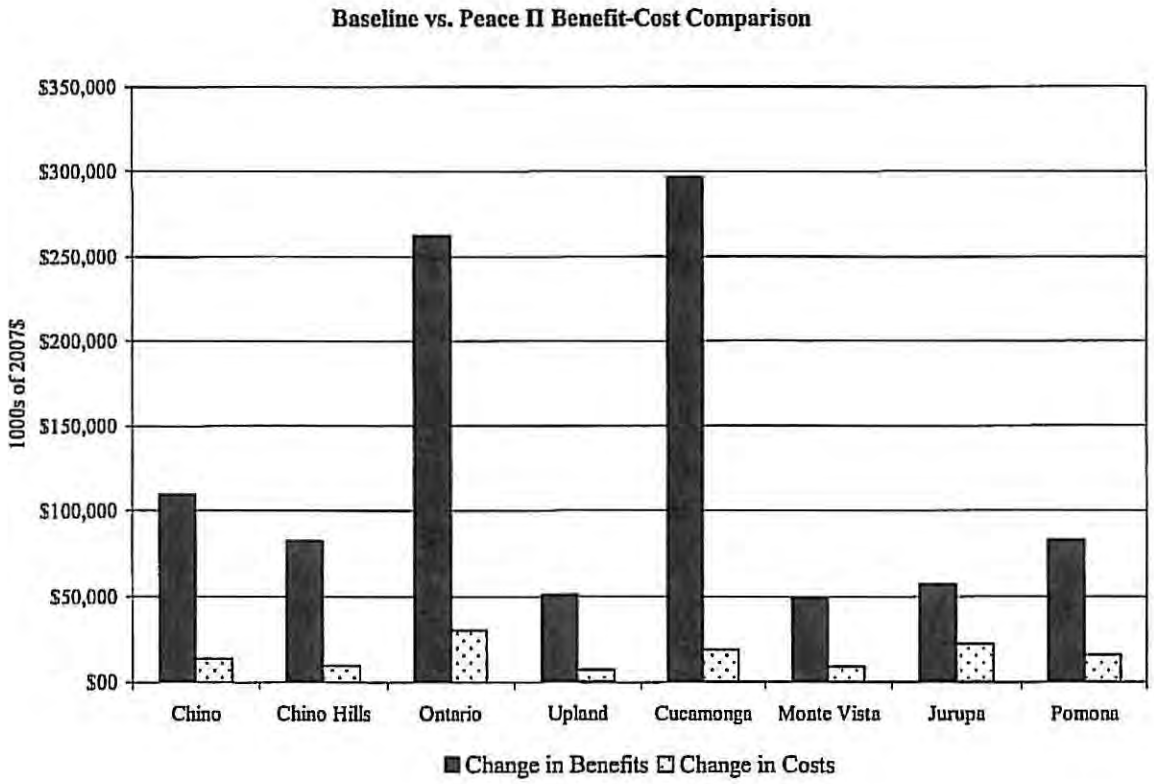


Figure 3

Distribution of Net Benefit, Peace II vs. Baseline ($/per AF)

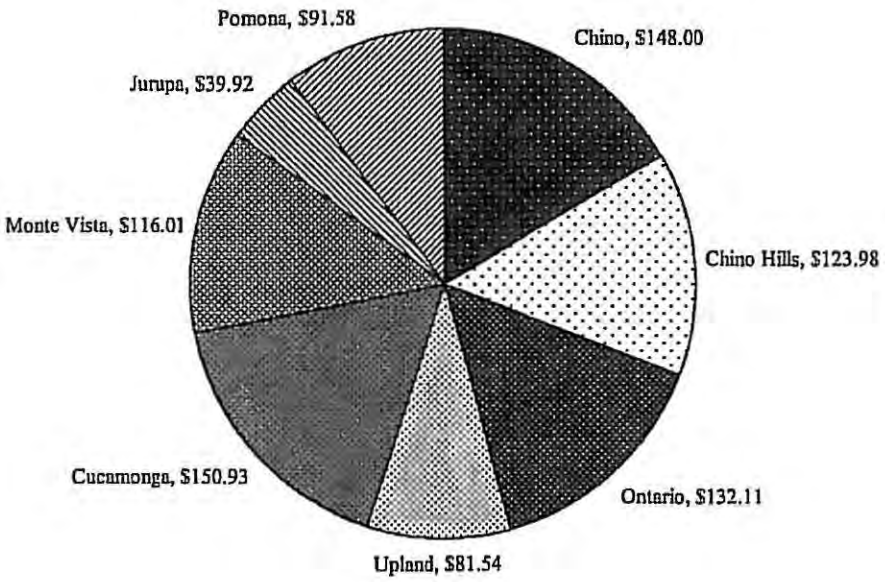


Figure 4

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 appropriative 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 mid-point 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	
	Peace I vs. Baseline	*Peace II vs. Baseline*	*Peace I vs. Baseline*	*Peace II vs. Baseline*
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
Total	**$28,965**	**$611,773**	**$3.15**	**$66.63**

Table 5: 50% of Desalter Obligation Paid by Ag Pool

	Net Benefit (1000s of $)		Net Benefit/AF	
	Peace I vs. Baseline	*Peace II vs. Baseline*	*Peace I vs. Baseline*	*Peace II vs. Baseline*
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
Total	**$122,101**	**$844,632**	**$13.30**	**$91.99**

Table 6: 5.5% Discount Rate

	Net Benefit (1000s of $)		Net Benefit/AF	
	Peace I vs. Baseline	*Peace II vs. Baseline*	*Peace I vs. Baseline*	*Peace II vs. Baseline*
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
Total	**$163,165**	**$806,761**	**$17.77**	**$87.87**

Table 7: 10% Conservation

	Net Benefit (1000s of $)		Net Benefit/AF	
	Peace I vs. Baseline	*Peace II vs. Baseline*	*Peace I vs. Baseline*	*Peace II vs. Baseline*
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
Total	**$183,064**	**$864,350**	**$22.07**	**$104.22**

Table 8: 50% Increase in Recycled Water Price

	Net Benefit (1000s of $)		Net Benefit/AF	
	Peace I vs. Baseline	*Peace II vs. Baseline*	*Peace I vs. Baseline*	*Peace II vs. Baseline*
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
Total	**$182,133**	**$858,571**	**$19.84**	**$93.51**

Attachment D

October 25, 2007

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

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.

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.

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:

(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.

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

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

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

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

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
Totals	876,050	262,815	175,000	225,000		213,235

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
Totals	876,050	262,815	175,000	225,000		213,235

Attachment F

September 21, 2007

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

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 Appropriative 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").

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,

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

October 25, 2007

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,

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 us 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."

Attachment "I-1"

Map Re-Operation

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.

[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:

(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 Watermater'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.

(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) and7.4(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

(vii) Santa Ana River Water Co. 31 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

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 is 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

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.

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.

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.

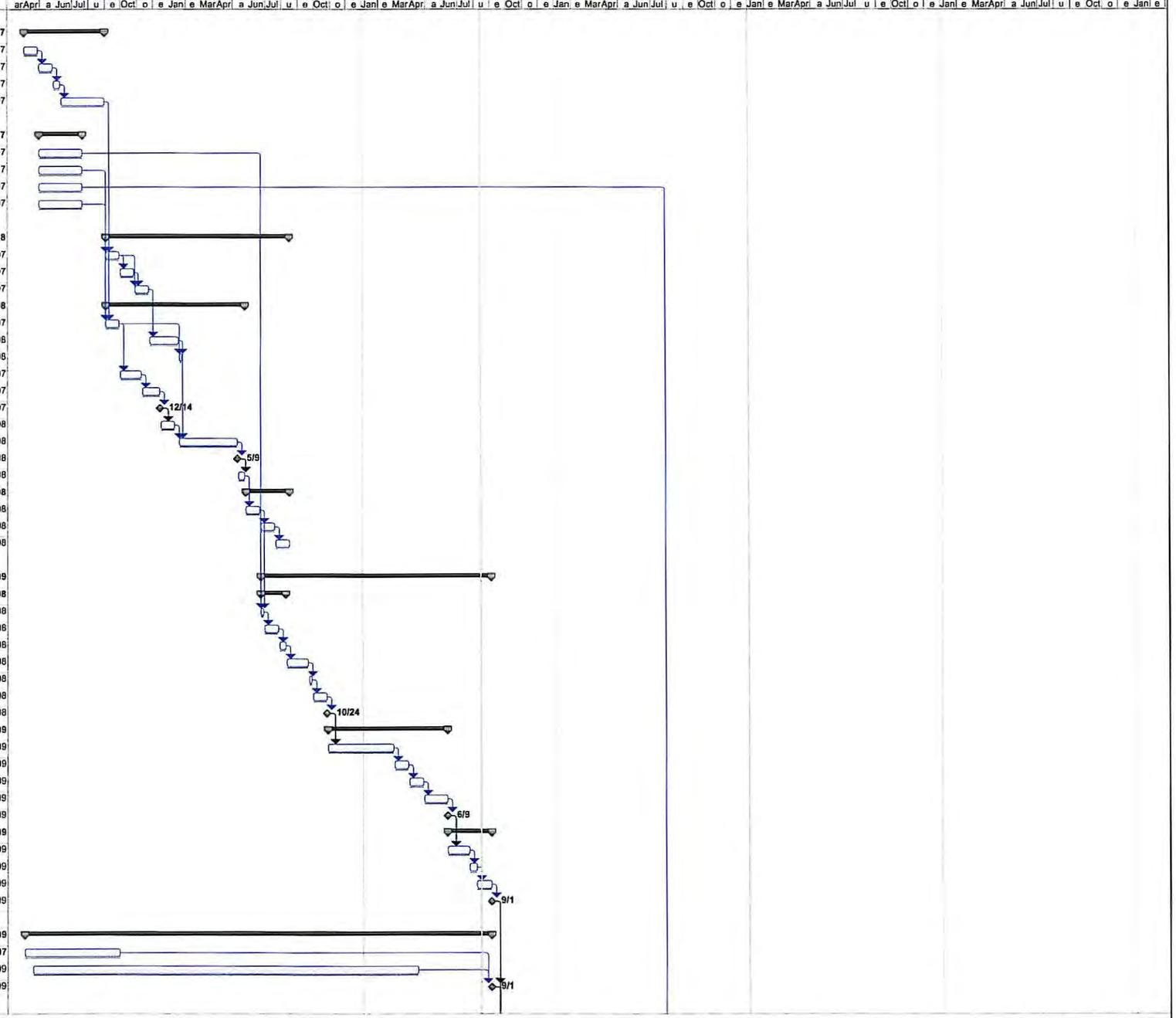
IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

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 A -- Pragmatic Schedule for the Planning, Design and Construction of the Chino Creek Well Field

ID	Task Name	Duration	Start	Finish
1				
2	**Prepare Project Description**	**110 days**	**Mon 4/2/07**	**Fri 8/31/07**
3	Prepare Draft Project Description	20 days	Mon 4/2/07	Fri 4/27/07
4	Circulate and Revise Draft Project Description	20 days	Mon 4/30/07	Fri 5/25/07
5	Finalize Draft Project Description	10 days	Mon 5/28/07	Fri 6/8/07
6	Prepare Screening-level Initial Study	60 days	Mon 6/11/07	Fri 8/31/07
7				
8	**Select Consultants**	**60 days**	**Mon 4/30/07**	**Fri 7/20/07**
9	Select CEQA Consultant	60 days	Mon 4/30/07	Fri 7/20/07
10	Select Well Design Consultant	60 days	Mon 4/30/07	Fri 7/20/07
11	Select Facilities Design Consultant	60 days	Mon 4/30/07	Fri 7/20/07
12	Select Program Manager	60 days	Mon 4/30/07	Fri 7/20/07
13				
14	**Select Well Sites**	**250 days**	**Mon 9/3/07**	**Fri 8/15/08**
15	Develop Three Well Field Alternatives	20 days	Mon 9/3/07	Fri 9/28/07
16	Determine Property Ownership in Each Well Field Alternative	20 days	Mon 10/1/07	Fri 10/26/07
17	Select Alternative Well Sites	20 days	Mon 10/29/07	Fri 11/23/07
18	**Implement Well Site Investigation Program**	**190 days**	**Mon 9/3/07**	**Fri 5/23/08**
19	Develop Investigation Plan	20 days	Mon 9/3/07	Fri 9/28/07
20	Negotiate Access to Test Sites	40 days	Mon 11/26/07	Fri 1/18/08
21	Obtain Permits	5 days	Mon 1/21/08	Fri 1/25/08
22	Prepare Bid Package	30 days	Mon 10/1/07	Fri 11/9/07
23	Advertise	25 days	Mon 11/12/07	Fri 12/14/07
24	Select Contractor	0 days	Fri 12/14/07	Fri 12/14/07
25	Negotiate Contract	20 days	Mon 12/17/07	Fri 1/11/08
26	Construct Test Wells, Run Stress Test and WQ Tests	80 days	Mon 1/21/08	Fri 5/9/08
27	Characterize Production Requirements and Water Quality	0 days	Fri 5/9/08	Fri 5/9/08
28	Revise Well Field Design	10 days	Mon 5/12/08	Fri 5/23/08
29	**Prepare Well Field Predesign Report**	**60 days**	**Mon 5/26/08**	**Fri 8/15/08**
30	Prepare Draft Report	20 days	Mon 5/26/08	Fri 6/20/08
31	Circulate and Revise Predesign Report	20 days	Mon 6/23/08	Fri 7/18/08
32	Finalize Predesign Report	20 days	Mon 7/21/08	Fri 8/15/08
33				
34	**CEQA Process for Chino Creek Well Field**	**312 days**	**Mon 6/23/08**	**Tue 9/1/09**
35	**Prepare Final Project Description**	**35 days**	**Mon 6/23/08**	**Fri 8/8/08**
36	Prepare Final Project Description	5 days	Mon 6/23/08	Fri 6/27/08
37	Circulate and Revise Final Project Description	20 days	Mon 6/30/08	Fri 7/25/08
38	Finalize Project Description	10 days	Mon 7/28/08	Fri 8/8/08
39	Prepare Initial Study	30 days	Mon 8/11/08	Fri 9/19/08
40	Prepare Notice of Preparation (NOP)	5 days	Mon 9/22/08	Fri 9/26/08
41	Circulate NOP	20 days	Mon 9/29/08	Fri 10/24/08
42	Conduct Public Meeting Regarding NOP	0 days	Fri 10/24/08	Fri 10/24/08
43	**Prepare Draft EIR**	**162 days**	**Mon 10/27/08**	**Tue 6/9/09**
44	Prepare Administrative Draft EIR	90 days	Mon 10/27/08	Fri 2/27/09
45	Circulate and Review Administrative Draft	20 days	Mon 3/2/09	Fri 3/27/09
46	Prepare Draft EIR	20 days	Mon 3/30/09	Fri 4/24/09
47	Review Period for Draft EIR	32 days	Mon 4/27/09	Tue 6/9/09
48	Public Review Meeting	0 days	Tue 6/9/09	Tue 6/9/09
49	**Finalize EIR**	**60 days**	**Wed 6/10/09**	**Tue 9/1/09**
50	Prepare Response to Comments	30 days	Wed 6/10/09	Tue 7/21/09
51	Circulate and Review Responses to Comments	10 days	Wed 7/22/09	Tue 8/4/09
52	Prepare Final EIR	20 days	Wed 8/5/09	Tue 9/1/09
53	Certify Final EIR	0 days	Tue 9/1/09	Tue 9/1/09
54				
55	**Select Well Field Alternative**	**632 days**	**Mon 4/2/07**	**Tue 9/1/09**
56	Negotiate Chino Airport/County Contribution	130 days	Mon 4/2/07	Fri 9/28/07
57	Negotiate OIA PRPs Contribution	520 days	Wed 4/18/07	Tue 4/14/09
58	Select Well Field	0 days	Tue 9/1/09	Tue 9/1/09
59				

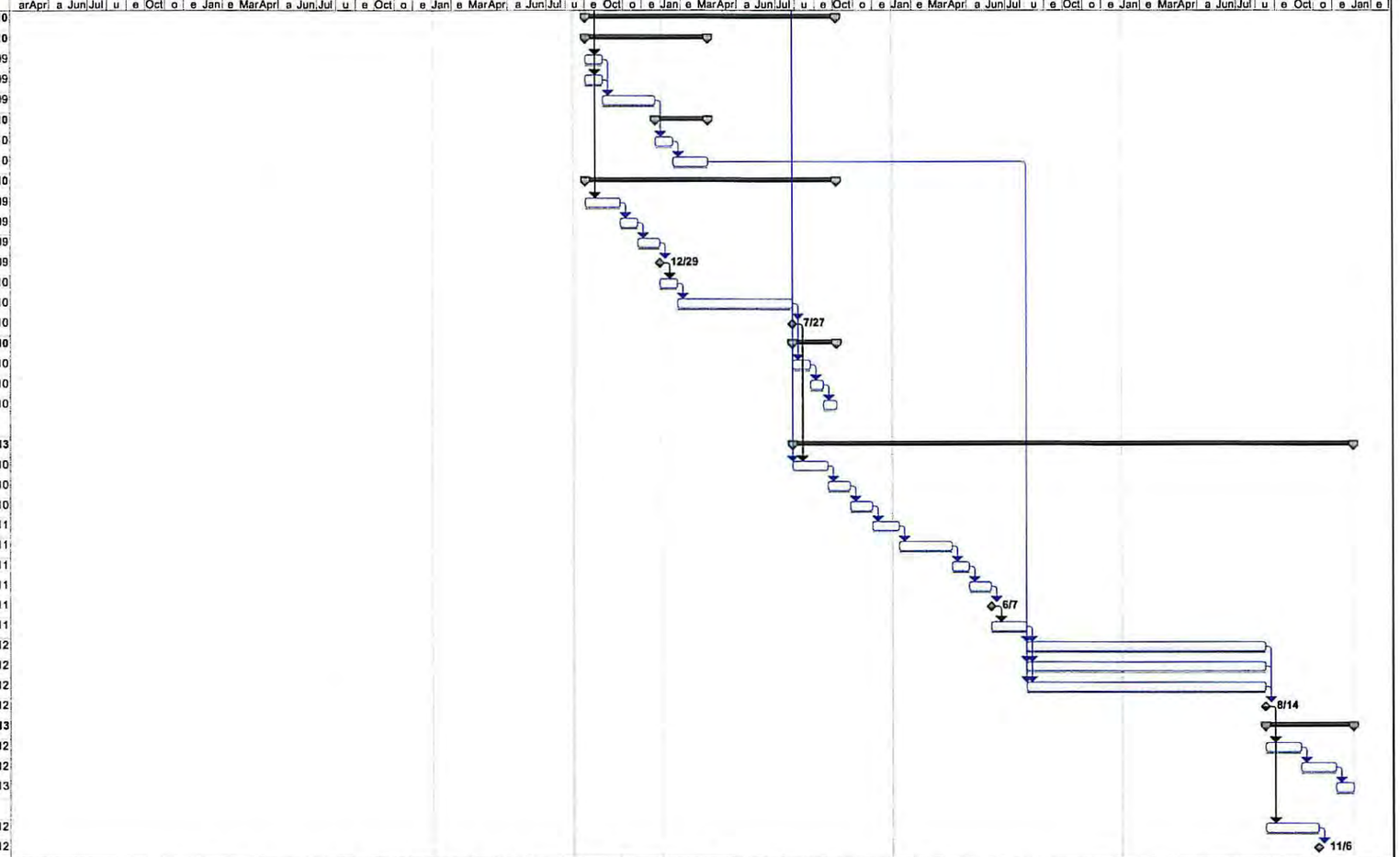


Project: 20070329 Schedule A Chino C
Date: Wed 8/12/09

Task — Progress — Summary — External Tasks — Split
Split — Milestone — Project Summary — External MileTask

Schedule A -- Pragmatic Schedule for the Planning, Design and Construction of the Chino Creek Well Field

ID	Task Name	Duration	Start	Finish
60	**Final Design of Well Field**	**285 days**	**Wed 9/2/09**	**Tue 10/5/10**
61	**Obtain Wells Sites**	**140 days**	**Wed 9/2/09**	**Tue 3/16/10**
62	Prepare Legal Descriptions	20 days	Wed 9/2/09	Tue 9/29/09
63	Establish Value	20 days	Wed 9/2/09	Tue 9/29/09
64	Negotiate Site Acquisition	60 days	Wed 9/30/09	Tue 12/22/09
65	**Obtain Raw Water Pipeline Easements**	**60 days**	**Wed 12/23/09**	**Tue 3/16/10**
66	Prepare Legal Description	20 days	Wed 12/23/09	Tue 1/19/10
67	Negotiate Easements	40 days	Wed 1/20/10	Tue 3/16/10
68	**Prepare Final Well Field Design**	**285 days**	**Wed 9/2/09**	**Tue 10/5/10**
69	Prepare Plans and Specifications for Wells	40 days	Wed 9/2/09	Tue 10/27/09
70	Prepare Bid Package	20 days	Wed 10/28/09	Tue 11/24/09
71	Advertise	25 days	Wed 11/25/09	Tue 12/29/09
72	Select Contractor	0 days	Tue 12/29/09	Tue 12/29/09
73	Negotiate Contract	20 days	Wed 12/30/09	Tue 1/26/10
74	Construct Six New Wells	130 days	Wed 1/27/10	Tue 7/27/10
75	Finalize Well Production and WQ Characteristic	0 days	Tue 7/27/10	Tue 7/27/10
76	**Prepare Well Construction Report**	**50 days**	**Wed 7/28/10**	**Tue 10/5/10**
77	Prepare Draft Well Construction Report	20 days	Wed 7/28/10	Tue 8/24/10
78	Circulate and Review Draft	15 days	Wed 8/25/10	Tue 9/14/10
79	Finalize Well Construction Report	15 days	Wed 9/15/10	Tue 10/5/10
80				
81	**Design and Construct Pipeline, Wellhead, and Treatment Plant Improvements**	**635 days**	**Wed 7/28/10**	**Tue 1/1/13**
82	Prepare 30 Percent Design Report	40 days	Wed 7/28/10	Tue 9/21/10
83	Prepare 50 Percent Design Report	25 days	Wed 9/22/10	Tue 10/26/10
84	Prepare 70 Percent Design Report	25 days	Wed 10/27/10	Tue 11/30/10
85	Prepare Final Design Report	30 days	Wed 12/1/10	Tue 1/11/11
86	Prepare Plans and Specifications	60 days	Wed 1/12/11	Tue 4/5/11
87	Prepare Bid Package	20 days	Wed 4/6/11	Tue 5/3/11
88	Advertise	25 days	Wed 5/4/11	Tue 6/7/11
89	Select Contractor	0 days	Tue 6/7/11	Tue 6/7/11
90	Negotiate Contracts	40 days	Wed 6/8/11	Tue 8/2/11
91	Construct Raw Water Pipeline	270 days	Wed 8/3/11	Tue 8/14/12
92	Construct Wellhead Improvements	270 days	Wed 8/3/11	Tue 8/14/12
93	Construct Desalter I Improvements	270 days	Wed 8/3/11	Tue 8/14/12
94	Construction Complete	0 days	Tue 8/14/12	Tue 8/14/12
95	**Prepare Construction Report**	**100 days**	**Wed 8/15/12**	**Tue 1/1/13**
96	Prepare Draft Construction Report	40 days	Wed 8/15/12	Tue 10/9/12
97	Circulate and Review Draft	40 days	Wed 10/10/12	Tue 12/4/12
98	Finalize Construction Report	20 days	Wed 12/5/12	Tue 1/1/13
99				
100	Start Up Testing of Improvements	60 days	Wed 8/15/12	Tue 11/6/12
101	Start of Regular Operations	0 days	Tue 11/6/12	Tue 11/6/12

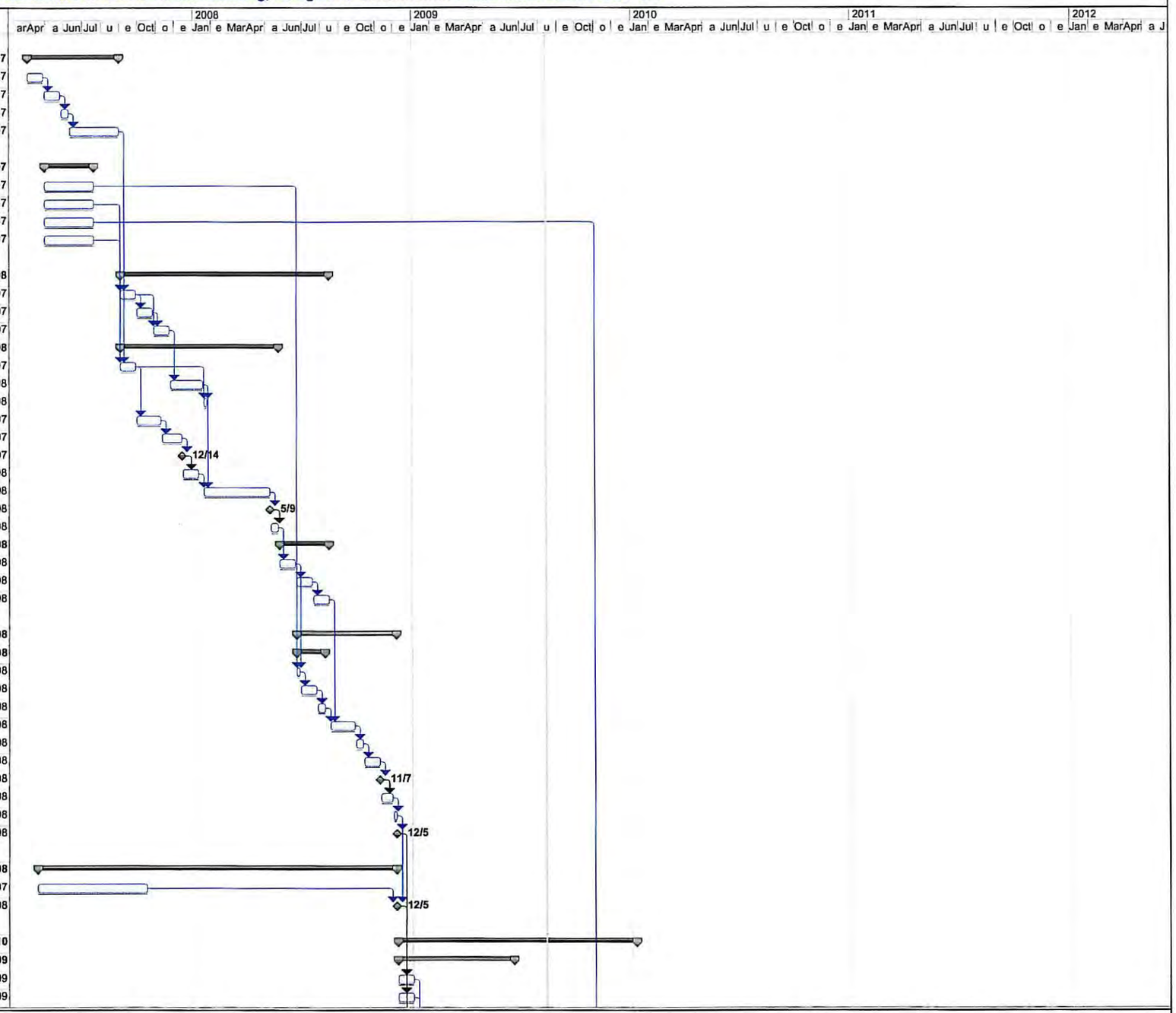


Project: 20070329 Schedule A Chino C
Date: Wed 8/12/09

Task — Progress — Summary — External Tasks — Split
Split — Milestone — Project Summary — External MileTask

Schedule B -- Accelerated Schedule for the Planning, Design and Construction of the Chino Creek Well Field

ID	Task Name	Start	Finish
1			
2	**Prepare Project Description**	**Mon 4/2/07**	**Fri 8/31/07**
3	Prepare Draft Project Description	Mon 4/2/07	Fri 4/27/07
4	Circulate and Revise Draft Project Description	Mon 4/30/07	Fri 5/25/07
5	Finalize Draft Project Description	Mon 5/28/07	Fri 6/8/07
6	Prepare Screening-Level Initial Study	Mon 6/11/07	Fri 8/31/07
7			
8	**Select Consultants**	**Mon 4/30/07**	**Fri 7/20/07**
9	Select CEQA Consultant	Mon 4/30/07	Fri 7/20/07
10	Select Well Design Consultant	Mon 4/30/07	Fri 7/20/07
11	Select Facilities Design Consultant	Mon 4/30/07	Fri 7/20/07
12	Select Program Manager	Mon 4/30/07	Fri 7/20/07
13			
14	**Select Well Sites**	**Mon 9/3/07**	**Fri 8/15/08**
15	Develop Three Well Field Alternatives	Mon 9/3/07	Fri 9/28/07
16	Determine Property Ownership in Each Well Field Alternative	Mon 10/1/07	Fri 10/26/07
17	Select Alternative Well Sites	Mon 10/29/07	Fri 11/23/07
18	**Implement Well Site Investigation Program**	**Mon 9/3/07**	**Fri 5/23/08**
19	Develop Investigation Plan	Mon 9/3/07	Fri 9/28/07
20	Negotiate Access to Test Sites	Mon 11/26/07	Fri 1/18/08
21	Obtain Permits	Mon 1/21/08	Fri 1/25/08
22	Prepare Bid Package	Mon 10/1/07	Fri 11/9/07
23	Advertise	Mon 11/12/07	Fri 12/14/07
24	Select Contractor	Fri 12/14/07	Fri 12/14/07
25	Negotiate Contract	Mon 12/17/07	Fri 1/11/08
26	Construct Test Wells, Run Stress Test and WQ Tests	Mon 1/21/08	Fri 5/9/08
27	Characterize Production Requirements and Water Quality	Fri 5/9/08	Fri 5/9/08
28	Revise Well Field Design	Mon 5/12/08	Fri 5/23/08
29	**Prepare Well Field Predesign Report**	**Mon 5/26/08**	**Fri 8/15/08**
30	Prepare Draft Report	Mon 5/26/08	Fri 6/20/08
31	Circulate and Revise Predesign Report	Mon 6/23/08	Fri 7/18/08
32	Finalize Predesign Report	Mon 7/21/08	Fri 8/15/08
33			
34	**CEQA Process for Chino Creek Well Field**	**Mon 6/23/08**	**Fri 12/5/08**
35	**Prepare Final Project Description**	**Mon 6/23/08**	**Fri 8/8/08**
36	Prepare Final Project Description	Mon 6/23/08	Fri 6/27/08
37	Circulate and Revise Final Project Description	Mon 6/30/08	Fri 7/25/08
38	Finalize Project Description	Mon 7/28/08	Fri 8/8/08
39	Prepare Initial Study	Mon 8/18/08	Fri 9/26/08
40	Prepare Mitigated Negative Declaration	Mon 9/29/08	Fri 10/10/08
41	Circulate Mitigated Negative Declaration	Mon 10/13/08	Fri 11/7/08
42	Conduct Public Meeting Regarding Mitigated Negative Declaration	Fri 11/7/08	Fri 11/7/08
43	Prepare Response to Comments	Mon 11/10/08	Fri 11/28/08
44	Prepare Final Mitigated Negative Declaration	Mon 12/1/08	Fri 12/5/08
45	IEUA Adopts Mitigated Negative Declaration	Fri 12/5/08	Fri 12/5/08
46			
47	**Select Well Field Alternative**	**Wed 4/18/07**	**Fri 12/5/08**
48	Negotiate Chino Airport/County Contribution	Wed 4/18/07	Tue 10/16/07
49	Select Well Field	Fri 12/5/08	Fri 12/5/08
50			
51	**Final Design of Well Field**	**Mon 12/8/08**	**Fri 1/8/10**
52	**Obtain Wells Sites**	**Mon 12/8/08**	**Fri 6/19/09**
53	Prepare Legal Descriptions	Mon 12/8/08	Fri 1/2/09
54	Establish Value	Mon 12/8/08	Fri 1/2/09

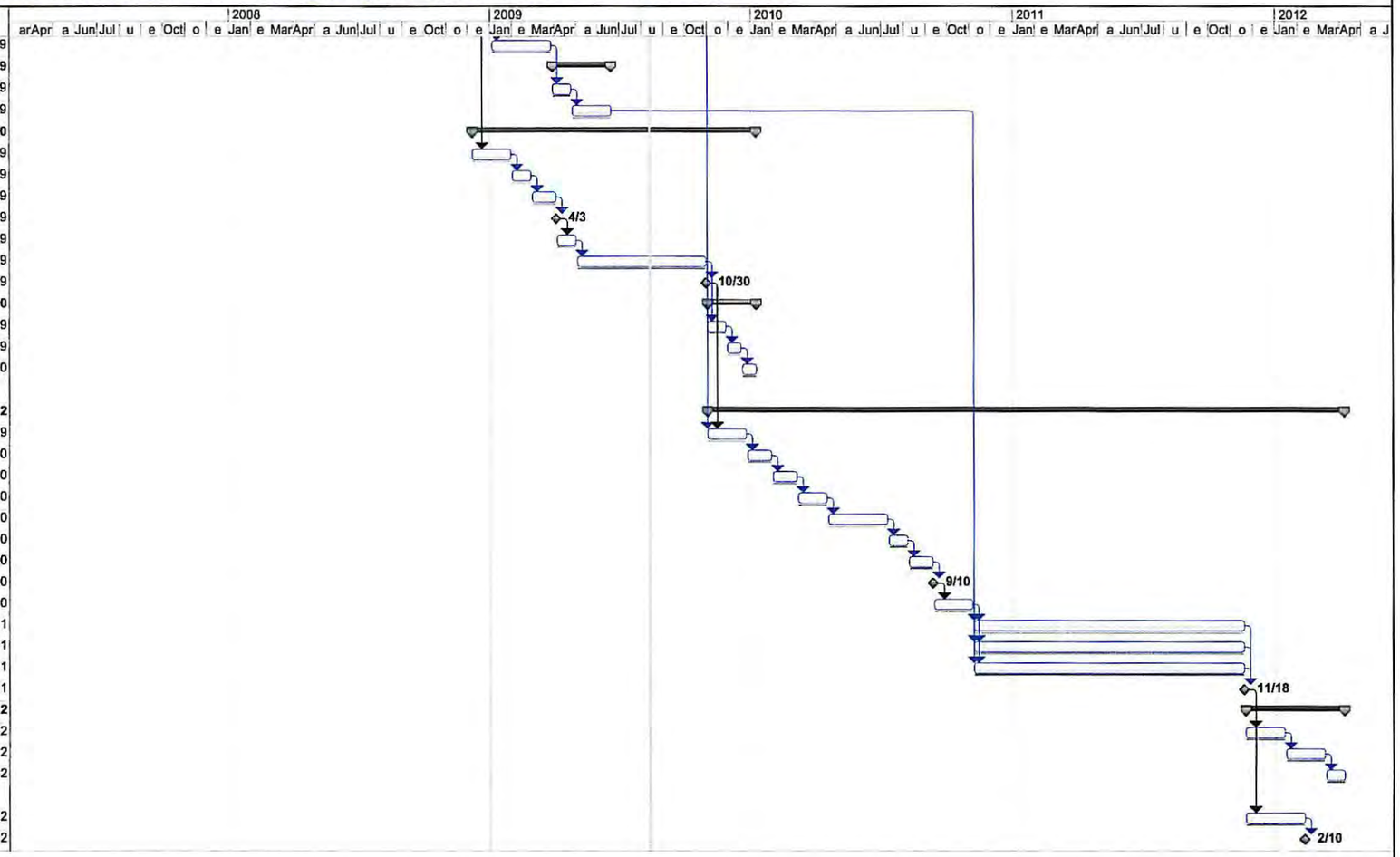


Project: 20070329 Schedule B Chino C
Date: Wed 9/12/07

Task | Progress | Summary | External Tasks | Split
Split | Milestone | Project Summary | External MileTask

Schedule B -- Accelerated Schedule for the Planning, Design and Construction of the Chino Creek Well Field

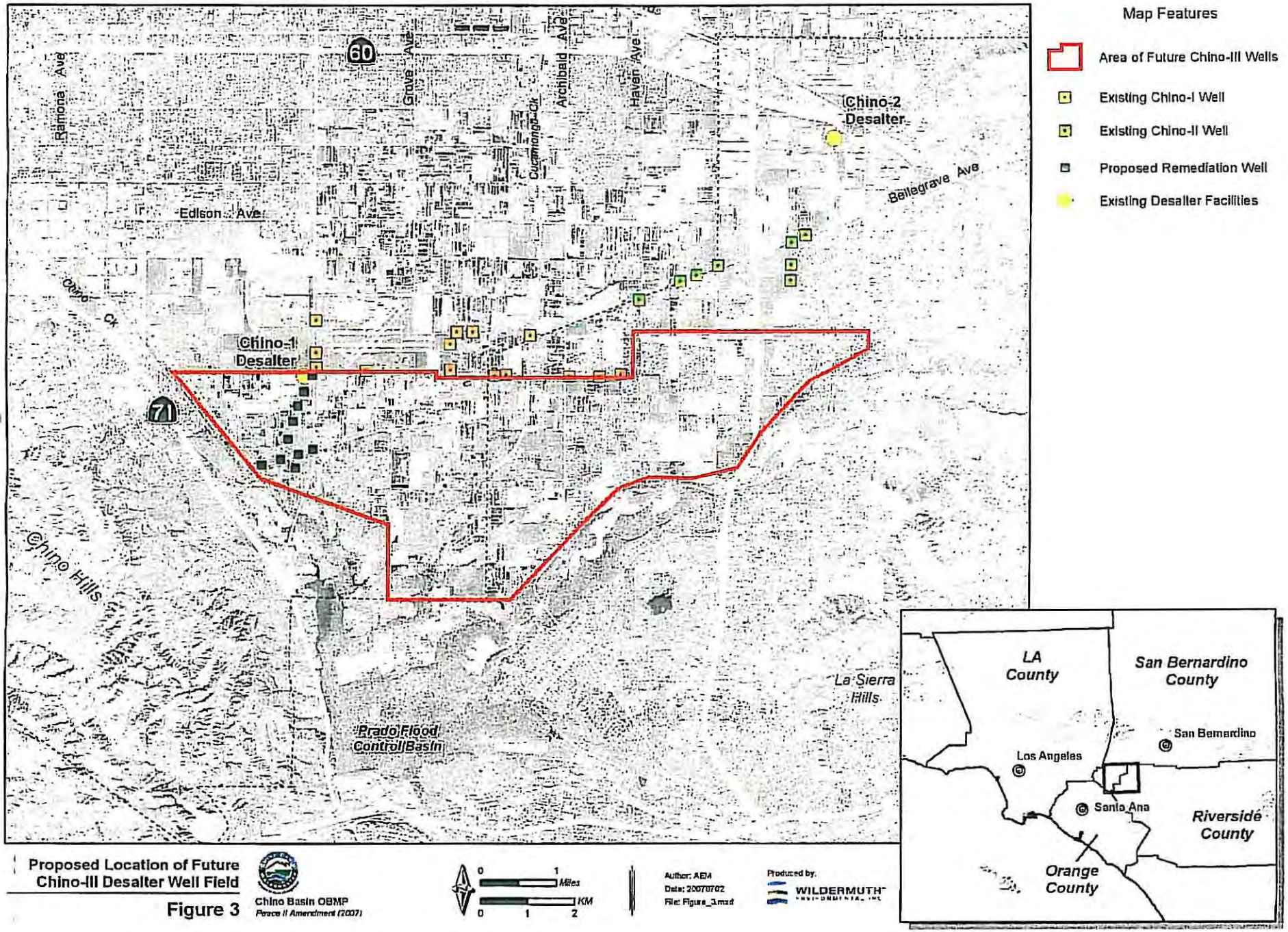
ID	Task Name	Start	Finish
55	Negotiate Site Acquisition	Mon 1/5/09	Fri 3/27/09
56	**Obtain Raw Water Pipeline Easements**	**Mon 3/30/09**	**Fri 6/19/09**
57	Prepare Legal Description	Mon 3/30/09	Fri 4/24/09
58	Negotiate Easements	Mon 4/27/09	Fri 6/19/09
59	**Prepare Final Well Field Design**	**Mon 12/8/08**	**Fri 1/8/10**
60	Prepare Plans and Specifications for Wells	Mon 12/8/08	Fri 1/30/09
61	Prepare Bid Package	Mon 2/2/09	Fri 2/27/09
62	Advertise	Mon 3/2/09	Fri 4/3/09
63	Select Contractor	Fri 4/3/09	Fri 4/3/09
64	Negotiate Contract	Mon 4/6/09	Fri 5/1/09
65	Construct Six New Wells	Mon 5/4/09	Fri 10/30/09
66	Finalize Well Production and WQ Characteristics	Fri 10/30/09	Fri 10/30/09
67	**Prepare Well Construction Report**	**Mon 11/2/09**	**Fri 1/8/10**
68	Prepare Draft Well Construction Report	Mon 11/2/09	Fri 11/27/09
69	Circulate and Review Draft	Mon 11/30/09	Fri 12/18/09
70	Finalize Well Construction Report	Mon 12/21/09	Fri 1/8/10
71			
72	**Design and Construct Pipeline, Wellhead, and Treatment Plant Improvemer**	**Mon 11/2/09**	**Fri 4/6/12**
73	Prepare 30 Percent Design Report	Mon 11/2/09	Fri 12/25/09
74	Prepare 50 Percent Design Report	Mon 12/28/09	Fri 1/29/10
75	Prepare 70 Percent Design Report	Mon 2/1/10	Fri 3/5/10
76	Prepare Final Design Report	Mon 3/8/10	Fri 4/16/10
77	Prepare Plans and Specifications	Mon 4/19/10	Fri 7/9/10
78	Prepare Bid Package	Mon 7/12/10	Fri 8/6/10
79	Advertise	Mon 8/9/10	Fri 9/10/10
80	Select Contractor	Fri 9/10/10	Fri 9/10/10
81	Negotiate Contracts	Mon 9/13/10	Fri 11/5/10
82	Construct Raw Water Pipeline	Mon 11/8/10	Fri 11/18/11
83	Construct Wellhead Improvements	Mon 11/8/10	Fri 11/18/11
84	Construct Desalter I Improvements	Mon 11/8/10	Fri 11/18/11
85	Construction Complete	Fri 11/18/11	Fri 11/18/11
86	**Prepare Construction Report**	**Mon 11/21/11**	**Fri 4/6/12**
87	Prepare Draft Construction Report	Mon 11/21/11	Fri 1/13/12
88	Circulate and Review Draft	Mon 1/16/12	Fri 3/9/12
89	Finalize Construction Report	Mon 3/12/12	Fri 4/6/12
90			
91	Start Up Testing of Improvements	Mon 11/21/11	Fri 2/10/12
92	Start of Regular Operations	Fri 2/10/12	Fri 2/10/12



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

Chino Basin OBMP
Peace II Amendment (2007)

EXHIBIT O

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Attorney for the CITY OF ONTARIO

EXEMPT FROM FILING FEE
PER GOV. CODE, § 6103

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: RCVRS 51010

Assigned for All Purposes to:
Honorable Stanford E. Reichert

DECLARATION OF CHRISTOPHER QUACH

[Concurrently Filed with Application; Proposed Order]

Date: April 8, 2022
Time: 1:30 p.m.
Dept.: S35

DECLARATION OF CHRISTOPHER QUACH

I, Christopher Quach, declare:

1. I am over 18 years of age, and I am employed as a Senior Associate Engineer for the Ontario Municipal Utilities Company. I am personally familiar with the Ontario Municipal Company's official and business records regularly maintained in its case file for the Chino Basin Municipal Water District v. City of Chino litigation and the negotiations stated herein. If called as a witness, I could and would competently testify to the following facts and circumstances based upon my personal knowledge, except as to those matters declared upon information and belief, and as to those matters, I am informed and believe them to be true.

2. On November 1, 2021, Ontario sent a letter to Mr. Kavounas, Watermaster General Manager, that outlined questions and comments to the draft Fiscal Year 2021/2022 Assessment Package. Ontario requested that Watermaster explain the basis for exempting 23,000 acre-feet (AF) of water produced from the Metropolitan Water District's (MWD) Chino Basin Conjunctive Use Program (CUP), also known as the Dry Year Yield Storage and Recovery Program (DYYP), as identified in the draft Fiscal Year 2021/2022 Assessment Package, from the Watermaster assessment and the Desalter Replenishment Obligation (DRO) assessment. Under the 1978 Chino Basin Judgement ("Judgement"), this production should have been assessed. Watermaster waived assessments for two Parties of the Chino Groundwater Basin, Cucamonga Valley Water District (CVWD) and Fontana Water Company (FWC), inconsistent with the Judgement. (A true and correct copy of the letter dated November 1, 2021, is attached hereto as Exhibit "A" and incorporated herein by reference.)

3. On November 18, 2021, Watermaster presented a staff report to the Watermaster Board in response to Ontario's November 1, 2021 letter. The Watermaster Board directed Watermaster Staff and legal counsel to evaluate the concerns raised by Ontario surrounding the DYYP and related applicability to Watermaster assessments.

4. On November 18, 2021, the Watermaster Board approved the Fiscal Year 2021/2022 Assessment Package. Ontario understood that resolution to the questions and

comments raised regarding the DYYP would not affect the ability to retroactively address the Fiscal Year 2021-2022 Assessment Package. As stated in the Watermaster staff report on the assessment of Ontario's issue, if warranted the assessment package could always be changed retroactively.

5. In an effort to exhaust all administrative remedies, on January 5, 2022, Watermaster, Ontario, CVWD, and FWC met to discuss the DYYP issues and begin good faith negotiations.

6. On January 24, 2022, Ontario, CVWD, and FWC met to discuss a draft settlement term sheet and good faith negotiations are currently ongoing. Ontario is actively working with Parties and Watermaster to reach a resolution.

7. On January 24, 2022, Ontario sent a letter to Mr. Kavounas, Watermaster General Manager, detailing Ontario's concerns with Watermaster's administration of the DYYP. (A true and correct copy of the letter dated January 24, 2022, is attached hereto as Exhibit "B" and incorporated herein by reference.)

8. On January 27, 2022, Watermaster presented a staff report to the Watermaster Board in response to Ontario's concerns as reiterated in the January 24, 2022 letter and in response to the Watermaster Board's direction on November 18, 2021. However, when asked, Watermaster general counsel stated that he was "not prepared to provide a legal opinion in this moment." It was understood by Ontario that in order to comply with Watermaster Board direction on November 18, 2021, a report with legal counsel's opinion would be forthcoming.

9. On February 11, 2022, Ontario requested Watermaster general counsel approve an extension to the 90-day period if determined necessary by Watermaster.

///

///

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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge.

Executed on this 17th day of February, 2022, at San Bernardino, California.

Christopher Quach, P.E.
Senior Associate Engineer
Ontario Municipal Utilities Company

EXHIBIT "A"

CITY OF ONTARIO

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MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA DORST-PORADA
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

November 1, 2021

Peter Kavounas, General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730
Email: pkavounas@cbwm.org

Re: Questions and Comments on the Draft Fiscal Year 2021-2022 Assessment Package

Dear Peter:

The City of Ontario (Ontario) appreciates the opportunity to provide comments and submit questions on the draft Fiscal Year 2021-2022 Assessment Package.

The draft Fiscal Year 2021-2022 Assessment Package identifies a total of 23,000 AF of groundwater production produced from the storage account established for the Metropolitan Water District's (MWD) Chino Basin Conjunctive Use Program (CUP). The Chino Basin CUP and related Chino Basin Watermaster (Watermaster) storage agreements were approved through the Watermaster process in 2003 and 2004. The most recent Amendment No. 8 to the Chino Basin CUP is dated January 23, 2015 and included changes to the Exhibit G Operating Party Performance Criteria. The Operating Party Performance Criteria establishes, among other things, qualifying production as the measurement of a reduction to imported water deliveries and a corresponding replacement with the Chino Basin groundwater stored under this program. Ontario's understanding is that the storage and withdrawal of supplemental water under the Chino Basin CUP can only be done pursuant to a properly approved written agreement with Watermaster and shall not have an adverse impact on other produces.

Ontario requests that Watermaster explain the basis for exempting water produced from MWD's CUP, as identified in the draft Fiscal Year 2021-2022 Assessment Package, from the Watermaster assessment and the Desalter Replenishment Obligation (DRO) assessment. The exemption appears to be based, at least in part, on a March 20, 2019 letter agreement (2019 Letter) from the MWD and signed by Watermaster, Inland Empire Utilities Agency and Three

Valleys Municipal Water District with the subject line of "Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology". Specifically, Ontario would like responses to the following:

1. How did Watermaster evaluate the impacts of this significant change in the recovery of water originally stored under the Chino Basin CUP?
2. Explain and illustrate how the Exhibit G Performance Criteria is being met.
3. The 2019 Letter does not address the topic of Watermaster Assessments. The mechanics of this transaction appear to be more of a stored water purchase & transfer between MWD and individual Parties producing the water. Why is the production of this water not subject to the same assessments as other production by individual Parties?
4. When evaluating the 2019 Letter and the proposed changes, describe the Watermaster approval process. The contemplated changes in the 2019 Letter did not go through the Pools, Advisory Committee, or the Board. What was the basis for forgoing this process?
5. How was it determined that agencies who are not signatories to the Chino Basin CUP approved by Watermaster are allowed to participate in the recovery of water stored under this program?
6. How was it determined that broad based benefit was still being achieved?

The 2019 Letter fundamentally changed the recovery side of this Watermaster approved storage and recovery program without obtaining an approved written agreement through the Watermaster process. Additionally, the implications of these changes were not represented and/or evaluated to determine the impacts on individual parties.

Ontario appreciates the opportunity to provide comments on the draft Fiscal Year 2021-2022 Assessment Package and looks forward to working collaboratively with Watermaster and the various stakeholders towards a resolution of these concerns.

Sincerely,

Scott Burton, P.E.
Utilities General Manager

CC: Appropriative Pool Parties

EXHIBIT "B"

CITY OF ONTARIO

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COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

January 24, 2022

Peter Kavounas, General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730
Email: pkavounas@cbwm.org

SENT VIA EMAIL AND CERTIFIED US MAIL

Re: Dry Year Yield Program

Dear Peter,

The City of Ontario (Ontario) appreciates the recent Watermaster Board direction to staff and legal counsel to evaluate the concerns raised by Ontario surrounding the Dry Year Yield Storage and Recovery Program (DYYP) and related applicability to Watermaster assessments. In awaiting this legal report back to the Board, Ontario remains concerned that Watermaster is administering an unauthorized change to the DYYP that is inconsistent with the storage agreement approved by Watermaster and ordered by the Court. This has resulted in a material change to the DYYP, adversely impacts Ontario, and has the potential to further impact Parties to the Judgment in the future. The subject changes are identified in a March 20, 2019 letter agreement (2019 Letter) signed by the Metropolitan Water District (MWD), Watermaster's General Manager, and two MWD member agencies on the Watermaster Board. This was done independent of any formal Watermaster Pool/Advisory/Board approval process, which is unacceptable. The purpose of this letter is to expand on the significance of this issue and provide Watermaster with the opportunity to correct the matter as soon as possible.

Background

Ontario submitted comments and questions on the Draft Fiscal Year 2021-2022 Assessment Package to the Watermaster General Manager in a letter dated November 1, 2021. Ontario's letter discussed the 2019 Letter with the subject line of "Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology." While Ontario appreciates Watermaster's Staff Reports released on November 16, 2021

and January 7, 2022 regarding this matter, Ontario's concerns remain foundationally in the execution of the 2019 Letter, how it fundamentally changed the recovery aspect of the DYYP, how it is not consistent with the 2004 Court-approved agreements and that it did not go through the formal Watermaster approval process similar to other material DYYP amendments.

The DYYP consists of three sets of agreements ordered by the Court: The 2003 Funding Agreement, the 2004 Storage Agreement, and the Local Agency Agreements such as the one executed by the City of Ontario. The intent of the program is to provide greater water supply reliability by storing water in advance of dry periods and pumping the stored water in lieu of receiving imported water during droughts. The Court found that the DYYP as described in the Funding Agreement provides broad mutual benefit to the parties to the Judgment.

The Court-ordered Funding Agreement indicates that "the specific location and operation of the facilities necessary to accomplish this commitment must still be analyzed by Watermaster..." and "This approval will take the form of Watermaster approval of the Local Agency Agreements..." Consistent with the Funding Agreement, the Local Agency Agreements define each agencies' facilities and annual recovery capacity, including performance targets of an imported water shift and program water extraction for each participating agency.

The Local Agency Agreements are the foundation of the storage and recovery program storage application, subsequent analysis, approvals, and ultimately the Court-approved Storage Agreement. As stated in the 2003 Court Order, "until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application ... the storage and recovery program cannot be undertaken." Additionally, per the Watermaster Storage Agreement, "Any modification of facilities that is materially different than those contemplated by the Local Agency Agreements will require the filing of a new application." The intent of the performance criteria per Amendment No. 8 to the Groundwater Storage Program Funding Agreement, Exhibit G is "to reduce imported water deliveries to the Operating Parties and replace it with stored Chino Basin groundwater..." (underline added for emphasis). Recovery of water under the 2019 Letter is inconsistent with the Local Agency Agreements and is therefore inconsistent with the Court Orders and should be determined as impermissible by Watermaster as an arm of the Court. In addition, it seems to remove the DYYP performance criteria that historically served as the basis for Watermaster to waive assessments.

During the initial project development there were amendments to the Funding Agreement that pertained to the completion timing of facilities and changes in sources of funds. The only material change to the DYYP occurred with the 2015 Amendment No. 8 to the Funding Agreement, which was universally approved through the Watermaster process after the Operating Parties approved amendments to the Local Agency Agreements with the same changes to the Exhibit G Performance Criteria. While Amendment No. 8 made material changes to the program, they were nowhere near as significant as those found in the 2019 Letter which changed the amount of water each agency was able to recover, as well as when and how that water was recovered. The 2019 Letter was not accompanied by corresponding changes to the Local Agency Agreements, was not approved through the Watermaster process, and also allowed Parties without Local Agency Agreements to participate in the DYYP.

Ontario's Concerns

Watermaster is allowing the recovery of water from the DYYP storage account that is not consistent with the storage agreement approved via the Watermaster process and ordered by the Court in 2004. The 2019 Letter fundamentally changed the recovery side of this Watermaster approved storage and recovery program. The 2019 Letter changed the application of the Exhibit G Performance Criteria and allowed for water to be recovered outside of the Local Agency Agreements (in terms of agency, location, and quantity) without a corresponding shift off of imported water. In effect, this is production of supplemental water from storage and must be treated as such under the provisions of the Judgement and Peace Agreements.

Regarding assessments, the Judgment requires virtually all production to be assessed in order to pay for Watermaster activities in a shared fashion based on beneficial use of the Basin. Waiving assessments on some production inherently places a greater expense on the remaining production that is factored into assessments. Court approval of the Funding Agreement and Storage Agreement (and subsequent Local Agency Agreements) does not explicitly define how assessments shall be handled, but Watermaster has historically waived assessments (or assessed during in-lieu put) on water produced under the approved DYYP without objection. What is different now is that the 2019 Letter fundamentally changed the DYYP as approved by the Court, as approved by the Parties through the Local Agency Agreements, and as approved through the Watermaster process. Table 1 below shows the program as it was approved by the Court and as it has been modified by the 2019 Letter. Watermaster is not authorized by the Court or otherwise to allow DYYP water to be recovered in this manner or to exempt this production from pumping assessments. Watermaster must administer assessments consistent with the Judgment and Court Orders.

Table 1 - DYY Performance Criteria 2004 vs Draft FY 2021/22 Asseessment Package

	2004 - Original DYY Agreement		FY 2021/22 Assessment Package	
Appropriator	Req. IW Shift (AF)	Req. DYY GW Take (AF)	Req. IW Shift (AF)	DYY Claim (AF)
City of Chino	1,159	1,159	0	0
City of Chino Hills	1,448	1,448	0	0
City of Ontario	8,076	8,076	0	0
City of Pomona	2,000	2,000	0	0
City of Upland	3,001	3,001	0	0
Cucamonga Valley Water District	11,353	11,353	0	20,500
Fontana Water Company	No Local Agency Agreement		0	2,500
Jurupa Community Services District	2,000	2,000	0	0
Monte Vista Water District	3,963	3,963	0	0
Total	33,000	33,000	0	23,000

Notes:
1. Operating Plan Varies year to year
2. Voluntary Claim is any pumping above Groundwater Baseline and below Physical Production

Additionally, the 2019 Letter impacted the broad-based benefit of the program, which is to provide greater water supply reliability by storing water in advance of dry periods and pumping the stored water in lieu of receiving imported water during droughts. Considering the current drought predicament, a participating agency's ability to access imported water has been greatly impacted by allowing the DYYP storage account to be drained outside of its originally intended purpose. This impact is further illustrated by MWD's urgent introduction in January 2022 of two newly proposed imported water delivery deferment programs that similarly seek to accomplish the original intent of the DYYP, a corresponding shift from imported water to groundwater.

Conclusion

The 2019 Letter fundamentally changed the recovery side of this Court-ordered and Watermaster approved storage and recovery program without the necessary approvals. The implications of these changes were not represented and/or evaluated to determine the material physical impacts on individual parties and the Chino Basin. Watermaster signed off on a material change to the recovery of water under the DYYP which is inconsistent with the Court Order and without formal review and approval through the Watermaster process. This sets an alarming precedence for future Watermaster lead endeavors and infringes upon Ontario's rights and protections under the Judgment and related Court Orders that Watermaster is charged with administering. Ontario is requesting that Watermaster cease any further implementation of the 2019 Letter and amend assessment packages as applicable.

Ontario looks forward to working collaboratively with Watermaster and impacted parties towards a resolution of these concerns.

Sincerely,

Courtney Jones

Courtney Jones, P.E.
Water Resources and Regulatory Affairs Director

CC: Chino Basin Watermaster Board
Eduardo Espinoza, Appropriative Pool Chair
Brian Geye, Non-Agricultural Pool Chair
Bob Feenstra, Agricultural Pool Chair

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 February 17, 2022 served the following:

1. DECLARATION OF CHRISTOPHER QUACH

/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 February 17, 2022 in Rancho Cucamonga, California.

By: Janine Wilson
Chino Basin Watermaster

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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 action within. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On July 30, 2025 I served the following:

1. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF ONTARIO'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by the United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:
See attached service list: Mailing List 1

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

/___/ BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/ X / BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.
See attached service list: Master Email Distribution List

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 30, 2025 in Rancho Cucamonga, California.

By: Ruby Favela Quintero
Chino Basin Watermaster

PAUL HOFER
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