

MINUTES
CHINO BASIN WATERMASTER
AGRICULTURAL POOL COMMITTEE MEETING

April 8, 2021

The Agricultural Pool Committee meeting was held via Zoom (conference call and web meeting) on April 8, 2021.

AGRICULTURAL POOL COMMITTEE MEMBERS PRESENT ON CALL

Jeff Pierson, Vice-Chair	Crops
Ruben Llamas for Ron LaBrucherie, Jr.	Crops
Nathan deBoom	Dairy
Henry DeHaan	Dairy
John Huitsing	Dairy
Geoffrey Vanden Heuvel	Dairy
Steven Raughley	County of San Bernardino
Carol Boyd	State of California – CIM
Pete Hall	State of California – CIM
Jimmy Medrano	State of California – CIM

WATERMASTER STAFF PRESENT ON CALL

Peter Kavounas	General Manager
Joseph Joswiak	Chief Financial Officer
Edgar Tellez Foster	Water Resources Mgmt. & Planning Dir.
Anna Nelson	Executive Services Director
Justin Nakano	Water Resources Technical Manager
Frank Yoo	Water Resources Senior Associate
Janine Wilson	Senior Accountant
Vanessa Aldaz	Administrative Assistant

WATERMASTER CONSULTANTS PRESENT ON CALL

Brad Herrema	Brownstein Hyatt Farber Schreck, LLP
Andy Malone	West Yost
Sodavy Ou	West Yost
Garrett Rapp	West Yost
Carolina Sanchez	West Yost
Lauren Sather	West Yost

OTHERS PRESENT ON CALL

Gino Filippi	Crops
Paul Hofer	Crops
Tracy Egoscue	Egoscue Law Group, Inc.
Gregor Larabee	State of California – DOJ
Marilyn Levin	State of California – DOJ
Richard Rees	Wood plc

CALL TO ORDER

Vice-Chair Pierson called the Agricultural Pool Committee meeting to order at 1:30 p.m. on behalf of Chair Feenstra who was absent.

ROLL CALL

(0:01:30) Ms. Nelson conducted the roll call and announced that a quorum was present.

AGENDA – ADDITIONS/REORDER

(0:03:16) Vice-Chair Pierson informed the pool that there would be no Confidential Session.

I. CONSENT CALENDAR

Note: All matters listed under the Consent Calendar are considered to be routine and non-controversial and will be acted upon by one motion in the form listed below. There will be no separate discussion on these items prior to voting unless any members, staff, or the public requests specific items be discussed and/or removed from the Consent Calendar for separate action.

A. MINUTES

Approve as presented:

1. Minutes of the Agricultural Pool Committee Meeting held March 11, 2021
2. Minutes of the Agricultural Pool Committee Special Meeting held March 31, 2021

B. FINANCIAL REPORTS

Receive and file as presented:

1. Cash Disbursements for the month of February 2021
2. Watermaster VISA Check Detail for the month of February 2021
3. Combining Schedule for the Period July 1, 2020 through February 28, 2021
4. Treasurer's Report of Financial Affairs for the Period February 1, 2021 through February 28, 2021
5. Budget vs. Actual Report for the Period July 1, 2020 through February 28, 2021
6. Cash Disbursements for March 2021 (Information Only)

C. APPLICATION: WATER TRANSACTION

Provide advice and assistance to the Advisory Committee on the proposed transaction:

The purchase of 7,500 acre-feet of water from Cucamonga Valley Water District by Fontana Water Company. This purchase is made from Cucamonga Valley Water District's Annual Production Right.

(0:04:41) Mr. Raughley raised a question regarding Consent Calendar Item I.B.5. A discussion ensued.

(0:16:16) A roll call vote was taken.

Motion by Mr. Nathan deBoom, seconded by Mr. Steven Raughley, and passed by unanimous roll call vote as attached to these minutes (Attachment 1)

Moved to approve the Consent Calendar as presented.

II. BUSINESS ITEMS

A. OLD BUSINESS

Physical Storage Changes vs Managed Storage Changes

(0:18:18) Mr. Kavounas introduced Mr. Rapp of West Yost, who gave a presentation. A discussion ensued.

III. REPORTS/UPDATES

A. LEGAL COUNSEL

1. San Bernardino County Superior Court Emergency Order
2. March 26, 2021 Hearing
3. April 30, 2021 Hearing
4. Kaiser Permanente Lawsuit

(0:51:32) Mr. Herrema gave a report.

B. ENGINEER

1. Maximum Benefit Annual Report
2. 2020 State of the Basin: Production and Recharge

(0:55:53) Mr. Malone gave a presentation on Item 1. A discussion ensued.

(1:21:42) Mr. Malone introduced Ms. Ou and Ms. Sather (West Yost staff) who gave a presentation on Item 2. A discussion ensued.

C. CHIEF FINANCIAL OFFICER

1. Status Report: Fiscal Year 2021/22 Budget
2. March 31, 2021 OAP Special Meeting Action

(1:55:22) Mr. Joswiak gave a report. A discussion ensued.

(2:33:29) Ms. Egoscue made the following comments:

“Recognizing that this has been a long meeting already, also recognizing and affording due respect to Watermaster general manager and general counsel, I would like to make the following statements. I also offer that I do not believe that it is necessary for a rebuttal or an argument coming from the Watermaster, but this is merely a statement for the pool’s consideration to make sure that the record is clear. What we have found above all else recently, and probably in perhaps for the past almost 7 years, is that the record should be very clear, whether it’s through the recorded meetings or the minutes or even the documents.

I would like to say that I believe that there’s a bit of conflating going on between the dispute over the budget. That it has arisen from the Monte Vista Water District’s general manager and its attempt to assert that the Judgment provides and compels that there is a veto process at the Advisory Committee for the pool budget in particular.

My belief, and again I’m the attorney for the pool so I do not assert policy issues or direction, is that this instant issue and some of these conversations, both today and in the budget workshops, have to do with Watermaster seeking to clarify that the pool budgets are not subject to a veto from the Advisory Committee. The Ag Pool is very aware, as is all of the members of the Watermaster family, how the Advisory Committee vote functions and what would follow if there was a process wherein the pool budgets were subject to that veto.

But turning to the report and the response to the pool, in particular regarding the pool’s March 31 special meeting directive to the Watermaster, and just speaking to that - I believe there is a fourth option available to the Pool. I do not believe there are only three. I recognize and respect that the Watermaster believes there are only three and it would make sense that the Watermaster would not advise the Agricultural Pool that there is a fourth option to file a motion against the Watermaster seeking the Watermaster’s implementation of the Peace Agreement as ordered by the court. And simply put and simply stated, this entire meeting leading up to this report has been extremely important and compelling. The Peace Agreement actually forced many of the amazing actions that were reported from the engineer and Watermaster staff including the desalters, the OBMP actions - this is all flowing from the Peace Agreement and storage is one of the components that we also heard about today that is also required and there are various rules regarding storage that flow directly from the Peace Agreement that I would note did not exist prior to the Peace Agreement. And in fact, if you look at the language of the Peace Agreement section or paragraph or chapter 5 is titled Watermaster Performance and in fact the dispute regarding the Peace Agreement provision that requires the Appropriative Pool to pay all expenses of the Ag Pool is under the Watermaster Performance section. And so, in my legal opinion, and again staying out of the policy because as the Agricultural Pool committee members have so eloquently already described, whether it’s reliance upon over 20 years of pattern and practice, whether it’s consideration for an extremely valuable give, an asset of the early transfer water, it is illegal fiction to argue that the Agricultural Pool would function or exist without the Watermaster.

The Agricultural Pool doesn't come together for any other purpose other than to serve and be a part of the Watermaster function. So having said that, the Watermaster has been ordered to implement the Peace Agreement. The Watermaster has Watermaster Performance as part of that Peace Agreement under section 5.4(a) and it is my statement to the pool that there is a fourth option at this point that the pool should consider, and I believe that we should take that consideration into a confidential session for purposes of discussing it. However, typically I would ask that, and I would avoid this kind of speech, however, in response to the Agricultural Pool's direction, Watermaster has offered this advice and I have felt, I feel compelled to offer a fourth option to complement the third option.

I will also note and acknowledge the undisputed fact that the Watermaster's general counsel has discussed, and I believe, and I would challenge that to assert that the two terms are not connected regarding the Peace Agreement, goes against the Peace Agreement itself. It is a contract, is all encompassing, you cannot take one part out and ignore another and having said that (and I'm almost done, Vice Chair Pierson, and I hope I haven't been taking too long) I would 100% like to acknowledge that this situation that we find ourselves in, and that I find myself in as legal counsel for the pool, is extremely difficult and I'd like to end by saying that I acknowledge and understand and respect that the budget issue and the timing of the budget issue regarding this whole sense of Advisory and the veto, is not assisting us in our attempt to continue to move forward and implement basin management practices that the Ag Pool has been an extremely critical part of from the very beginning of the Judgment. Thank you very much for the time and I hope I didn't veer too far out of my lane."

D. GENERAL MANAGER

1. Status Report: Peace Agreement Amendment (PE8)
2. Annual Meeting with the RWQCB
3. Diversion Permits Annual Progress Reports
4. 2023 Recharge Master Plan Update
5. Other

(2:42:30) Mr. Kavounas gave a report and presentation on Item 2 and introduced Mr. Tellez Foster who gave a presentation on Item 3.

(2:55:59) Mr. Kavounas continued with the remainder of his report.

IV. INFORMATION

1. Ground-Level Monitoring Committee Semi-Annual Status Report
2. Chino Airport and South Archibald Plumes Semi-Annual Status Reports

(2:58:56) Ms. Boyd asked a question regarding the Semi-Annual Plumes Status Reports. A discussion ensued.

V. POOL DISCUSSION

1. Chairman's Update
2. Pool Member Comments

(3:00:53) Vice-Chair Pierson commented on the ongoing legal issues and storage.

(3:03:39) Mr. Vanden Heuvel commented on the publication of the Blomquist book. A discussion ensued.

VI. OTHER BUSINESS

None

VII. CONFIDENTIAL SESSION - POSSIBLE ACTION

A Confidential Session may be held during the Pool Committee meeting for the purpose of discussion and possible action.

None

ADJOURNMENT

Vice-Chair Pierson adjourned the Agricultural Pool Committee meeting at 4:38 p.m.

Secretary: _____

Approved: _____ May 13, 2021

Attachments:

1. 20210408 Roll Call Vote Outcome for Consent Calendar Items

Attachment 1 to 20210408 Agricultural Pool Committee Meeting Minutes

April 8, 2021 Agricultural Pool Meeting Roll Call Vote Outcome

Member	Alternate	Consent Calendar
LaBrucherie, Jr., Ron		
	Llamas, Ruben	yes
Pierson, Jeff, Vice-Chair		yes
deBoom, Nathan		yes
DeHaan, Henry		yes
Huitsing, John		yes
Vanden Heuvel, Geoffrey		yes
Raughley, Steven		yes
Boyd, Carol		yes
Hall, Pete		yes
Medrano, Jimmy		yes
Feenstra, Bob, Chair*		
	OUTCOME:	Passed Unanimously

*Chair Feenstra was absent.