

**Minutes**  
**CHINO BASIN WATERMASTER**  
**APPROPRIATIVE POOL MEETING**

September 8, 2011

The Appropriative Pool Meeting was held at the offices of Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, CA, on September 8, 2011 at 9:00 a.m.

**APPROPRIATIVE POOL MEMBERS PRESENT WHO SIGNED IN**

John Mura, Chair	City of Chino Hills
Mark Kinsey	Monte Vista Water District
Raul Garibay	City of Pomona
Mohamed El-Amamy	City of Ontario
J. Arnold Rodriguez	Santa Ana River Water Company
Marty Zvirbulis	Cucamonga Valley Water District
Sheri Rojo	Fontana Water Company
Josh Swift	Fontana Union Water Company
Tom Harder	Jurupa Community Services District
Dave Crosley	City of Chino
Rosemary Hoerning	City of Upland
Teri Layton	San Antonio Water Company
Geoff Kamansky	Niagara Bottling Company
Ben Lewis	Golden State Water Company

**Watermaster Board Members Present**

Bob Kuhn	Three Valleys Municipal Water District
Paula Lantz	City of Pomona

**Watermaster Staff Present**

Desi Alvarez	Chief Executive Officer
Danielle Maurizio	Senior Engineer
Gerald Greene	Senior Environmental Engineer
Joe Joswiak	Chief Financial Officer
Janine Wilson	Recording Secretary

**Watermaster Consultants Present**

Scott Slater	Brownstein, Hyatt, Farber & Schreck
Mark Wildermuth	Wildermuth Environmental Inc.

**Others Present Who Signed In**

Scott Burton	City of Ontario
Bob Gluck	City of Ontario
Justin Scott-Coe	Monte Vista Water District
Van Jew	Monte Vista Water District
Craig Miller	Inland Empire Utilities Agency
Ryan Shaw	Inland Empire Utilities Agency
Ron Craig	City of Chino Hills
Eunice Ulloa	Chino Basin Water Conservation District
Seth Zielke	Fontana Water Company
Vera Weamer	Wildermuth Environmental Inc.
Curtis Paxton	Chino Desalter Authority
Paul Deutsch	Geomatrix

Chair Mura called the Appropriative Pool Meeting to order at 9:02 a.m.

**AGENDA - ADDITIONS/REORDER**

Mr. Alvarez pulled the Appropriative Pool August 11, 2011 minutes from the Consent Calendar and noted a change needs to be made to one of the motions. Mr. Alvarez noted the minutes will be resubmitted in the October 13, 2011 meeting package.

**I. CONSENT CALENDAR****A. MINUTES (Pulled)**

1. Minutes of the Appropriative Pool Meeting held August 11, 2011

**B. FINANCIAL REPORTS**

1. Cash Disbursements for the month of July 2011
2. Watermaster VISA Check Detail for the month of July 2011
3. Combining Schedule for the Period July 1, 2010 through July 31, 2011
4. Treasurer's Report of Financial Affairs for the Period July 1, 2011 through July 31, 2011
5. Budget vs. Actual July 2010 through July 2011

Mr. Garibay inquired about Item B1 Cash Disbursements regarding the Pre-Paid Legal Service bill Mr. Joswiak stated this is a service that the employees pay for each month for a credit service that monitors employee's social security accounts. Money is deducted from the employee's payroll checks, and then Watermaster pays the actual bill from Pre-Paid Legal Services.

*Motion by Garibay second by Zvirbulis, and by unanimous vote  
Moved to approve Consent Calendar item B, as presented*

**II. BUSINESS ITEMS****A. APPLICATION OF THE 85/15 RULE (For Information and Discussion)**

Mr. Alvarez stated this item is before this Committee at the request of the Appropriative Pool and Advisory Committee for staff to make a presentation on the 85/15 Rule and its applicability. Mr. Alvarez gave the 85/15 Rule presentation which included topics on Background, Paying for Replenishment of Overproduction, Judgment Language, 85/15 Rule Participation, General Application, Replenishment Application, Application in Recent Assessment Packages, Future Application, and Water Transfer Example. Mr. Alvarez asked for any comments or questions. Ms. Hoerning inquired if this application of the 85/15 Rule will be on a go-forward basis as there are some transactions that have occurred that are not listed on the table in the staff report. Mr. Alvarez stated this is for Production Year 2010-2011, and the intent will be that staff will apply the 85/15 Rule consistent with the language in the Judgment so that only that portion of the transfer that makes up the overproduction for the previous year will be subject to the 85/15 Rule. Mr. Alvarez stated if there is a transfer that has gone the other way then staff will work with the parties to try and resolve any inconsistencies. Ms. Hoerning stated since this is an application that has been done over the years, and this has now come to light and staff wants to do a course correction, are those transfers that have already occurred under the past practice going to be considered. Mr. Alvarez stated staff is trying to be consistent with how the Judgment actually reads. Mr. Kinsey stated that is an interesting concept - changing the interpretation of the Pooling Plan, in terms of how the 85/15 Rule applies to preemptive replenishment water purchases. Mr. Kinsey offered further comment on this matter and noted it appears there is an interpretive change in a long-standing practice that the parties have. Mr. Kinsey stated if there have been any inconsistencies in the application of the 85/15 Rule in the past, then maybe that should be addressed. Mr. Kinsey stated since this is the Pooling Plan, it's an Appropriative Pool issue and a committee should be formed to talk about how this issue should be addressed. Mr. Kinsey offered further comment on a few questions which need to be addressed. Counsel Slater stated it is correct in terms of trying to group the activities into segments. Counsel Slater stated the Pooling Plan is part of the Judgment and it is intended to amend the 85/15 Rule and provide exact direction, which is in conflict with words that are on paper; a Judgment amendment is needed. Counsel Slater stated, on the other hand, the Appropriative Pool is free to interpret its own Pooling Plan by their own procedures and Watermaster will follow interpretative guidelines.

Counsel Slater stated whatever form the Appropriative Pool wants to take to formally adopt rules, procedures, or interpretative guidelines the Pool would then inform staff in terms of how to apply the rule. Counsel Slater stated if this Pool is trying to change the rule, then that takes a Judgment amendment. Counsel Slater stated the history is what the history is, and if there is conflict or concern over how it is applied the parties adopted a statute of limitations on its own actions. Counsel Slater stated if someone has a quarrel with how it was applied historically if it's beyond four years, its bygones be bygones. Ms. Rojo stated when the parties are talking about inconsistencies with how it's been handled in the past from the history that is presented, it seems to have been consistently applied throughout the past and inquired if the Pool has ever adopted a motion or taken action in the past. Counsel Slater stated it is what it is and it speaks for itself, and if somebody wants to argue that it is inconsistent – counsel is expressing no opinion. Counsel Slater inquired if a forensic exercise has been done to look at the Pool actions when they apply the rule. Mr. Alvarez stated a fairly exhaustive look up has been done and several discussions have taken place over this subject at several meetings which ended up contentious and parties just dropped the issue; no specific decision was found one way or the other. Ms. Rojo stated maybe Mr. Kinsey has a valid point to have the parties get together and revisit the topic. Mr. Kinsey stated what he is hearing from counsel is that there is a lot of latitude in providing the Pool with the ability to interpret the intent of the Pooling Plan; if the Pool decides what the intent of the Pooling Plan was, and then they will follow that interpretation. Counsel stated clear direction is needed. Chair Mura stated it was heard in these discussions that a working group of interested parties needs to be formed to work it out and frame it, then bring it back for discussion on how to take this forward. Chair Mura stated if the current plan is disincentive to the 85/15 Rule practice, then it is something that should be looked at and worked towards clearing up for all the parties' benefit. Mr. Kinsey inquired about the application date, which was asked earlier, and in putting together an Appropriative Pool committee to provide Watermaster with some guidance on how they want to apply the 85/15 Rule. Counsel Slater stated if the committee can develop a consensus on interpretation, and noted that would be strongly encouraged because if one party thinks it is an interpretation and another thinks is an amendment and this ends up in front of the judge arguing that point, and then it becomes a Watermaster issue. Mr. Alvarez noted Watermaster is not suggesting to change anything in the past but to move forward with this year's Assessment Package. A lengthy discussion regarding this matter ensued. Ms. Hoerning offered final comments and cautioned the parties who what to go back and fix things retroactively prior to today. Chair Mura concurred with Ms. Hoerning's comments and noted a working committee can address many of the topics discussed today prior to the next Assessment Package. A lengthy discussion regarding forming a committee and what the committee will be working on with this regard ensued. Chair Mura inquired if there were any volunteers for the working committee. Chair Mura noted the City of Ontario, City of Upland, Monte Vista Water District, and Fontana Water Company stated they would like to participate on this committee. Mr. Zvirbulis stated this group should be as inclusive as possible and more of a workshop instead of just certain parties attending. Mr. Alvarez stated a workshop will be scheduled in the near future for any member of the Appropriative Pool who wishes to attend.

**B. PRESENTATION ON THE STATE OF THE BASIN REPORT (For Information Only)**

Mr. Alvarez introduced the State of the Basin presentation and noted this will be the first in a series of several parts for this report. Mr. Wildermuth stated the State of the Basin Report is done every two years. Mr. Wildermuth stated this year Wildermuth Environmental prepared a coffee table book which has nothing but pictures, tables, and charts in it. Mr. Wildermuth stated embedded into the charts are text boxes filled with information, which will be helpful when reviewing this report. Mr. Wildermuth gave the Groundwater Levels and Storage 2000 to 2010 presentation which included maps and charts in detail. A discussion ensued after the presentation concluded regarding several of the slides and information presented.

**C. GROUNDWATER MODEL UPDATE (For Information Only)**

Mr. Wildermuth stated great progress is being made on the groundwater model. However, there are a couple of the water agencies who are not responding to the data requests which are hindering this project. Mr. Wildermuth stated it was Wildermuth Environmental's intention in the

October/November time frame to come to the Watermaster meetings and discuss planning scenarios, hopefully after those two agencies provide their future production estimates. Mr. Wildermuth stated that particular task is a requirement of the court to approve the Recharge Master Plan Update, in which new production and replenishment projections need to be formulated and provided to the court in December.

### **III. REPORTS/UPDATES**

#### **A. WATERMASTER GENERAL LEGAL COUNSEL REPORT**

##### **1. Next hearing Schedule and Preparation**

Counsel Slater stated staff and counsel have been meeting with the various stakeholders with regard to presenting Watermaster Resolution 2010-04 to the court. This is in connection with asking the court for direction to proceed with the Desalter Expansion, in clearing out the contingencies and providing relief for all of the parties on a go forward basis. Counsel Slater stated great progress is being made and Mr. Alvarez and Mark Wildermuth have done a great job interfacing with the Regional Board. It is expected to have a supportive declaration out of the Regional Board on the primary issue of whether Hydraulic Control has been achieved. Counsel Slater stated staff and counsel are extremely hopeful that that declaration will be executed, which should provide a context for the court to also make its findings. Counsel Slater stated counsel is planning on a hearing date of October 28, 2011, which is approximately 30 days beyond the prior expected date of September 30, 2011.

##### **2. Restated Judgment Process**

Counsel Slater stated the first part of the restated Judgment process was to produce a technically accurate form of the Judgment, inclusive of all orders and amendments, which has been on the Watermaster ftp site and has been circulated. Staff, counsel, and the parties now feel this is the completed and accurate form of the Judgment. Counsel Slater stated this portion was the scriveners exercise and a secondary portion of the process has now begun. Counsel Slater stated that actually starts with counsel preparing a fully annotated Judgment, which takes the Judgment itself and then cross-references the Rules & Regulations, Optimum Basin Management Plan, and the Pooling Plans so that when any person or party opens a page, they will see not only the text in the Judgment but the related cross-references to that text in other documents. Counsel Slater stated it is anticipated to have something out on this regard within the next 30 days, which will then be sent out to smaller committees that will be comprised of stakeholders, lawyers, and their principals to review the document. Counsel Slater stated that consistent with the earlier direction from the stakeholders staff and counsel intends on this not being a negotiating exercise, but one that is more scholarly in its effort to pull together all the resources and put them in one place so that the Judge has a quick reference book with everything in it. A lengthy discussion regarding this item and the necessity of going to the second portion of this project ensued.

#### **B. CEO/STAFF REPORT**

##### **1. Recharge Update**

Mr. Alvarez stated, as of this past weekend, there has been approximately 25,000-26,000 acre-feet of water spread in the Chino Basin. Mr. Alvarez stated the MWD replenishment water project may end sooner than originally anticipated. MWD, through the end of August, had delivered 166,000 acre-feet of the 225,000 acre-feet which means that amount will be exhausted at the end of September or middle of October. Watermaster was planning on purchasing 50,000 acre-feet of that 225,000 acre-feet of water. However, it appears that amount will only be 30,000 to 34,000 acre-feet of total replenishment in the basin. Mr. Alvarez stated that final number will be clearer toward the end of the month. Ms. Rojo inquired of the 225,000 acre-feet of MWD water that has gone into the ground, do we know how all the other MWD agencies are getting the water in the ground – is it through replenishment or is it through in lieu as that is a lot of water to get in the ground really fast. Mr. Alvarez stated he does not know how all the water is getting into the ground, though it seems to be a combination of replenishment and in lieu.

2. GE Injection Wells

Mr. Alvarez stated the GE Injection Wells has been an item that previously was before the Watermaster parties but it had been put in abeyance. Mr. Alvarez stated General Electric and the City of Ontario have now worked out an arrangement where they are all satisfied on a moving forward basis as to how to operate that facility. Mr. Alvarez stated staff will be coming back through the Watermaster process for approval of a plan in November.

3. 85/15 Rule

Mr. Alvarez stated this item goes back to the Recharge Master Plan and the implementation of the Recharge Master Plan amongst all of the commitments that Watermaster has. One of them is moving forward with the implementation of the Recharge Master Plan. Mr. Alvarez stated in looking at some of what the court expectations are, staff will be putting together a committee to provide oversight and direction on that. The committee will consist of Inland Empire Utilities Agency, Chino Basin Water Conservation District, San Bernardino County Flood Control District, and three representatives from the Appropriative Pool to make a working committee to move forward with that regard. Mr. Kinsey stated Watermaster has an existing Recharge Master Plan and the parties have a lot of questions about the likelihood of actually producing as much as what was anticipated. The parties know Wildermuth Environmental is updating the model, which will ultimately change the Recharge Master Plan. Mr. Kinsey stated the hesitancy is moving forward with commitments which in the future may turn out to be unnecessary. Mr. Kinsey stated Desalter obligation does go away in the future, whether it's at the end of the Peace Agreement or if it's earlier through a negotiation process. A lot of those agencies that are pumping out of the Desalter will eventually start using production rights to offset that Desalter replenishment obligation.

**IV. INFORMATION**1. Cash Disbursements for August 2011

No comment was made.

2. Newspaper Articles

No comment was made.

**V. POOL MEMBER COMMENTS**

No comment was made.

**VI. OTHER BUSINESS**

No comment was made.

**VII. CONFIDENTIAL SESSION - POSSIBLE ACTION**

Pursuant to the Appropriative Pool Rules & Regulations, a Confidential Session may be held during the Watermaster Pool meeting for the purpose of discussion and possible action.

No confidential session was held.

**VIII. FUTURE MEETINGS**

Thursday, September 8, 2011	9:00 a.m.	Appropriative Pool Meeting @ CBWM
Thursday, September 8, 2011	11:00 a.m.	Non-Agricultural Pool Conference Call Meeting
Thursday, September 8, 2011	1:00 p.m.	Agricultural Pool Meeting @ CBWM
Thursday, September 15, 2011	8:00 a.m.	IEUA Dry Year Yield Meeting @ CBWM
Thursday, September 15, 2011	9:00 a.m.	Advisory Committee Meeting @ CBWM
Thursday, September 15, 2011	10:30 a.m.	Land Subsidence Committee Meeting @ CBWM
Thursday, September 22, 2011	11:00 a.m.	Watermaster Board Meeting @ CBWM
<b>* Friday, October 28, 2011</b>	<b>10:30 a.m.</b>	<b>Watermaster Court Hearing @ Chino Court</b>

\* **Note:** The court hearing has changed from September 30, 2011 to **October 28, 2011**

Minutes Appropriative Pool Meeting

September 8, 2011

The Appropriative Pool Committee meeting was dismissed by Chair Mura at 10:24 a.m.

Secretary: \_\_\_\_\_

Minutes Approved: October 13, 2011