

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

April 11, 2013

The Appropriative Pool meeting was held at the offices of Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, CA, on April 11, 2013 at 9:00 a.m.

**APPROPRIATIVE POOL MEMBERS PRESENT**

Marty Zvirbulis, Chair	Cucamonga Valley Water District
Scott Burton	City of Ontario
Rosemary Hoerning	City of Upland
Ron Craig	City of Chino Hills
Dave Crosley	City of Chino
Mark Kinsey	Monte Vista Water District
Van Jew	Monte Vista Irrigation Company
Sheri Rojo	Fontana Union Water Company
Seth Zielke	Fontana Water Company
Tom Harder	Jurupa Community Services District
Geoff Kamansky	Niagara Bottling Company
Teri Layton	San Antonio Water Company

**Watermaster Board Members Present**

Bob Kuhn	Three Valleys Municipal Water District
Bob Craig	Jurupa Community Services District

**Watermaster Staff Present**

Peter Kavounas	General Manager
Danielle Maurizio	Assistant General Manager
Joe Joswiak	Chief Financial Officer
Sherri Molino	Recording Secretary

**Watermaster Consultants Present**

Brad Herrema	Brownstein, Hyatt, Farber & Schreck
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**Others Present**

Rick Hansen	Three Valleys Municipal Water District
David De Jesus	Three Valleys Municipal Water District
Nadeem Majaj	City of Chino Hills
John Bosler	Cucamonga Valley Water District
Jo Lynne Russo-Pereyra	Cucamonga Valley Water District
Justin Scott-Coe	Monte Vista Water District
Eunice Ulloa	Chino Basin Water Conservation District
Curtis Paxton	Chino Desalter Authority
Allison Burns	Stadling Yocca Carlson & Rauth for CDA
Robert Young	Fontana Water Company
Darron Poulsen	City of Pomona
Pete Hall	State of California, CIM
Rick Rees	State of California, CIM
John Schatz	John J. Schatz, Attorney at Law

Chair Zvirbulis called the Appropriative Pool Meeting to order at 9:04 a.m.

**AGENDA - ADDITIONS/REORDER**

There were no additions or reorders made to the agenda.

**I. CONSENT CALENDAR****A. MINUTES**

1. Minutes of the Appropriative Pool Meeting held March 14, 2013

**B. FINANCIAL REPORTS**

1. Cash Disbursements for the month of February 2013
2. Watermaster VISA Check Detail for the month of February 2013
3. Combining Schedule for the Period July 1, 2012 through February 28, 2013
4. Treasurer's Report of Financial Affairs for the Period February 1, 2013 through February 28, 2013
5. Budget vs. Actual Report for the Period July 1, 2012 through February 28, 2013

**C. WATER TRANSACTION**

1. **Consider Approval for Notice of Sale or Transfer** – The purchase of 1,100.000 acre-feet of water from Santa Ana River Water Company (SARWC) by Jurupa Community Services District (JCSD). This purchase is made first from SARWC's Annual Production Right, with any additional from storage. Date of application: March 11, 2013

*Motion by Hoerning, second by Burton, and by unanimous vote*

***Moved to approve Consent Calendar items A through C, as presented***

**II. BUSINESS ITEMS****A. CDA REQUEST RE REMEDIATION OF CHINO AIRPORT GROUNDWATER PLUME**

Mr. Kavounas stated this item is in response to a letter that Watermaster received from the Chino Desalter Authority (CDA) in February. The matter was referred to the three Pools for their advice and counsel; after discussion at those meetings in March it was requested that more information be provided. Subsequently, Watermaster and the CDA had individual meetings with each of the Pools recently. Mr. Kavounas stated staff has summarized the questions and answers which were reviewed at those meetings since not all Pool members were able to attend those meetings. Staff's request is to seek advice and counsel from the committee to the Watermaster Board on how to proceed; staff and CDA representatives are present to answer any questions.

Mr. Paxton stated he wanted this committee to know what authorization the CDA Board gave at their last meeting. The CDA addressed two matters, the first was the timing issue; the CDA Board does not object to an additional month to work through this process to assist answering any questions. The second matter the CDA Board addressed was in regard to Watermaster costs; the CDA would reimburse Watermaster for costs incurred in moving forward in this process, and that reimbursement would come from the settlement monies obtained from the County. Mr. Paxton reiterated those were the two actions the CDA Board took at their last meeting.

Counsel Herrema stated the Watermaster Board met in closed session on this item at its last meeting and the Board did not take any formal action other than to wait for the advice and counsel from the Pools. The Board also set two confidential sessions on this item for April 18, 2013 at 1:00 p.m. and April 25, 2013 at 10:00 a.m.

Chair Zvirbulis stated it may be important for the CDA members and their counsel to join the Appropriative Pool in closed session today to continue ongoing strategies. Chair Zvirbulis stated if it is the pleasure of this Pool, he would like to recommend a motion/recommendation be deferred until after closed session.

Mr. Kinsey stated he has a few questions of staff and legal counsel. Mr. Kinsey stated he believes several members of this Pool are struggling with the lack of information or knowledge which is necessary to allow us to make the best decision on this matter. Mr. Kinsey stated the Pool is looking at three different questions. The first is this Pool does not understand what has transpired since the adoption of Resolution, as far as getting together with the County and trying to negotiate some sort of settlement – this Pool does not know what is happening and has heard that money has been spent. Also, it is understood that Mr. Jeske, on behalf of the CDA, sat down with the County executive officer because of their historic relationship with the City of Ontario and maybe was trying to negotiate something; this Pool does not know the status of that discussion. Mr. Kinsey inquired as to what type of due diligence Watermaster or others has carried out in complying with that provision in the Resolution to try and obtain some type of settlement. Mr. Kinsey stated he does not know if that is information that can be shared in open session; however, it would be helpful information for this Pool to make a decision. Mr. Kinsey stated the second request is this Pool wants more information on the options available; a draft of the pleading with the concept of containment or offramps so that this Pool can share that with our own perspective legal counsel and Boards. Mr. Kinsey stated he discussed this last night with the Monte Vista Water District's (MVWD) Board; however, this was discussed in closed session so he can't share all that was discussed, except that the history and the use of that airport was by several companies including armed forces, and if an insurance claim gets triggered, it is going to go all the way back to prior users, who were probably all contributors to the plume. Mr. Kinsey stated MVWD and this Pool need to have an opportunity to look at and have a full understanding of the pleading. Mr. Kinsey stated the third question is to explore the possibility of some non-legal approaches to this matter which is for the Appropriative Pool to work out.

Mr. Kavounas stated to approach the first area of concern which is the due diligence and negotiation efforts to date; it is his understanding that Resolution 2010-04 was adopted in 2011. Discussions on the Desalter negotiations eventually morphed into discussions with the County, and have been going on since fiscal year 2007/2008. Mr. Kavounas stated staff has gone through our accounting system and have an assessment of the monies that have been charged to those accounts; however, without a detailed forensic accounting process it is difficult to assess exact dollar amounts. Mr. Kavounas stated only a summary can be provided at this point in time.

Ms. Layton inquired if Watermaster staff has that summary total and Mr. Kavounas stated staff does, but with the consideration of what was previously stated the amount has ranged from as little as \$25,000 in 2007/2008, and the highest year was 2011 which was \$178,000, and for the period of time from 2007/2008 until 2013, the total is \$405,000.

A discussion regarding this matter ensued.

Mr. Kinsey noted one of the discussions that came up at his Board meeting last night was regarding insurance policies which exclude coverage for contamination such as this; these types of questions or information need to be provided to us by the County.

Counsel Herrema stated the CDA's counsel is the most knowledgeable one here on those policies that the County has implicated; however, at this point in time there are almost always pollution exclusions in policies. Counsel Herrema stated the issue here is that the pollution goes way back before that clause became common place in insurance policies.

Ms. Burns stated Mr. Herrema is correct, the policies that were received from the County of San Bernardino show that prior to early 1980's the policies did not exclude contamination that covered the airport, and she noted she is getting together a matrix of those policies to make that information available shortly.

A discussion regarding this matter ensued.

Mr. Burton stated he would like to discuss costs for this and noted he is a CDA member, and it is his understanding that the CDA, after careful thinking and a long process of working with the CDA members and attorneys; the CDA policy makers went into closed session and made the decision that rather than filing a federal suit, they would request Watermaster to file a claim with the local court. As a member agency of the CDA it would be somewhat dysfunctional for the City of Ontario to support a counter approach here at the Appropriative Pool. The City of Ontario has a council member on the CDA Board and it is his decision. Mr. Burton stated while we can look at options and other approaches, this Pool needs to keep in mind that the CDA has asked a very specific question of Watermaster to help as a partner in filing this claim in the local court. This Pool needs to have a clear path on what information is needed to make a decision within the next month. Mr. Burton inquired about when it comes to the funding of this, if the CDA's intent is that we all are looking at this as an avenue to most efficiently resolve this issue, and are not expecting the CDA Watermaster parties to pay the costs, which still needs to be clarified; it is his feeling that it is most appropriate for the CDA to pick up this cost.

Mr. Layton inquired why the CDA doesn't file this directly. Mr. Burton stated the CDA can't file it directly through the Watermaster court; they must go through the Watermaster process. The CDA could file it in the federal court; however, they have elected that this is the best and most effective approach for this case to be filed through the Watermaster process.

Mr. Hoerning stated perhaps the CDA needs to come back and clarify that they are willing to pick up that cost whether it is settled or not, because right now there is a caveat in the settlement.

Mr. Kinsey offered final comment on this matter and noted this could become entirely unruly to the entire Watermaster process. Mr. Kinsey stated we do not know enough nor have we had enough time to make a decision.

Mr. Burton stated with respect to the parties needing more information, what he would like to see happen today is this Pool specifically identify what information is needed to be in a position prior to the next month's meetings to make a decision, and who is going to provide that information to us.

Chair Zvirbulis stated there have been individual Pool meetings on this matter with the CDA and their counsel, and he is requesting more discussion today and possibly forming a motion/recommendation during closed session.

#### **B. RIGHT OF ENTRY PERMIT BETWEEN THE STATE OF CALIFORNIA AND CBWM**

Mr. Kavounas stated this item has been in the works for a few years. The State of California no longer needs wells on the California Institute for Men (CIM) property. Some of these wells have been monitored by Watermaster staff over time and the data from those seventeen wells on that property are used for various reports that Watermaster has to make as a result of obligations from the OBMP Implementation Plan. Mr. Kavounas stated what is in front of this committee today is a proposed Right of Entry permit that the state would grant Watermaster, for Watermaster to continue monitoring those seventeen wells on the property. The agreement requires that Watermaster provide insurance; the level of insurance is well within Watermaster's limits which will not present additional costs for Watermaster. The wells are already being monitored, so the continuation of monitoring the wells does not present additional costs for Watermaster. The only cost implication is the assumption of the responsibility to decommission the wells at some point in the future if the wells are no longer needed for monitoring. The state has assumed the responsibility that if they were to terminate this permit within the first five-years, they would have the obligation to decommission the wells; if the state allows Watermaster to continue beyond five-years, Watermaster will assume the decommission cost. Mr. Kavounas stated the cost for decommission varies, although, in today's cost evaluation it is approximately \$120,000. Mr. Kavounas stated what is being presented today is an agreement that has been thoroughly reviewed by the state, and what staff is going to be recommending to the Watermaster Board is to give the General Manager the authority to execute the Right of Entry

permit, and because there might still need some non-substantial changes, authority to make those changes and sign the permit. Mr. Kavounas stated in the case there are substantial changes that need to be made to this permit; it will have to come back before it gets executed through the Watermaster process again.

Ms. Layton inquired as to who owns the wells. Mr. Kavounas stated the state owns the wells. Ms. Layton inquired if the state is going to allow Watermaster to continue to monitor the wells. Mr. Kavounas stated they will allow Watermaster to install equipment and allow continuous access to monitor them. Ms. Layton inquired if the state has been using these wells for water and Mr. Kavounas stated these are monitoring wells; the state has been using them for monitoring purposes to gather data, as has Watermaster. Ms. Layton offered further comment on this matter and inquired about Watermaster continuing to provide data to the CIM. Mr. Kavounas stated it is prudent for any land owner to say if someone is going to come on their property and gather data that they should have access to the results.

A discussion on this matter ensued.

*Motion by Kinsey, second by Burton, and by unanimous vote*

***Moved to authorize the General Manager to execute the proposed right of entry permit, allowing authority to approve non-substantive changes, as presented***

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

#### A. **LEGAL COUNSEL REPORT**

Counsel Herrema stated he had no further report other than the report given under the CDA item.

#### B. **GM REPORT**

##### 1. Budget Process Update

Mr. Kavounas stated the Personnel Committee met last week and discussed items which were related to the Watermaster budget process. Mr. Kavounas stated there is budget workshop scheduled for Tuesday, April 16, 2013 at 9:30 a.m. at the Watermaster office.

##### 2. RRR Update

Mr. Kavounas stated he has distributed his notes from the RRR event to all the Pool chairs and has asked for all comments/input, and after he receives them the revised notes will go to the Watermaster Board to also allow for their input. Chair Zvirbulis stated he has received some comments from Pool members which he will compile and provide to Watermaster tomorrow.

##### 3. ACWA Conference

Mr. Kavounas stated the next ACWA conference is coming up in May and it seems to conflict with the May Pool Committee meetings so he will not be attending this conference this year because at the May meetings Watermaster will be presenting its budget.

Added Comment:

Mr. Kavounas stated there is a meeting of the Southern California Water Committee (SCWC), and we have a member that is a member of the executive committee, Mr. Geoffrey Vanden Heuvel, and he wanted to bring to the Pools attention that the SCWC is having one of its meetings on Friday, April 26, 2013 which is being hosted locally by Inland Empire Utilities Agency (IEUA). Mr. Kavounas stated the luncheon and panel discussion is at noon; the subject is Safe and Secure Water Supplies, and the featured speaker is John Laird, Secretary of California Natural Resources Agency.

**IV. INFORMATION**

1. Cash Disbursements for March 2013  
No comment was made.

**V. POOL MEMBER COMMENTS**

Ms. Layton inquired about the cash disbursement for March in which IEUA was paid \$10,000 for community outreach advertising campaign. Mr. Joswiak stated that is a standard expense that Watermaster pays for every year; and is budgeted for annually. Mr. Joswiak stated Watermaster pays a portion of the amount that IEUA uses for community outreach regarding water.

**VI. OTHER BUSINESS**

No comment was made.

The regular open Appropriative Pool meeting was convened to hold its confidential session at 9:34 a.m.

**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.

The confidential session concluded at 10:55 a.m.

Chair Zvirbulis asked for a motion on the Chino Desalter Authority item.

Mr. Kinsey stated his motion.

*Motion by Kinsey, second by Harder, and by unanimous vote*

***Moved that the Appropriative Pool make no recommendation on the Chino Desalter (CDA) Authority request at this time, and further requests the Watermaster counsel prepare a proposed draft pleading, then forward a copy to the Appropriative Pool chair for distribution to individual Appropriative Pool members. The Watermaster and the Appropriative Pool will continue to work on other potential solutions to address this item with the CDA, as presented***

Mr. Kavounas stated Mr. Burton made a suggestion at the previous open session for the Pools to express any specific items that additional information is needed by the time the committees meet again in May; are there any specific items identified that staff and/or counsel can begin to assemble information for this Pool. Chair Zvirbulis stated that was covered in the motion that the Appropriative Pool work with the CDA. Mr. Kavounas noted if any party has any questions send to Watermaster and in that email let it be known if you want your email distributed to all the parties, and if you would like your answer sent directly to you or directly to everyone.

**VIII. FUTURE MEETINGS AT WATERMASTER**

Tuesday, April 9, 2013	10:00 a.m.	Personnel Committee Meeting
Thursday, April 11, 2013	9:00 a.m.	Appropriative Pool Meeting
Thursday, April 11, 2013	11:00 a.m.	Non-Agricultural Pool Conference Call Meeting
Thursday, April 11, 2013	1:30 p.m.	Agricultural Pool Meeting
Tuesday, April 16, 2013	9:30 a.m.	Budget Workshop
Thursday, April 18, 2013	8:00 a.m.	IEUA DYY Meeting
Thursday, April 18, 2013	9:00 a.m.	Advisory Committee Meeting
Thursday, April 18, 2013	10:00 a.m.	RMPU Amendment Steering Committee Meeting
Thursday, April 18, 2013	1:00 p.m.	Watermaster Board Confidential Conference Call
Tuesday, April 23, 2013	9:30 a.m.	Potential 2 <sup>nd</sup> Budget Workshop

Thursday, April 25, 2013	10:00 a.m.	Watermaster Board Confidential Session Meeting
Thursday, April 25, 2013	11:00 a.m.	Watermaster Board Meeting

Chair Zvirbulis adjourned the Appropriative Pool meeting at 10:59

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

Minutes Approved: May 9, 2013