



CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, CA 91730
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

PETER KAVOUNAS, P.E.
General Manager

STAFF REPORT

DATE: May 28, 2020
TO: Watermaster Board
SUBJECT: 2020 Storage Management Plan (Business Item II.C.)

SUMMARY:

Issue: The 2020 Storage Management Plan Final Report (Final Report) was prepared through a stakeholder process and completed on December 11, 2019. Sections 2.1-2.6 of the Final Report provide a description and overview of the proposed Storage Management Plan (SMP). Watermaster completed its overarching 2020 OBMP Update Report on January 24, 2020, of which, the 2020 SMP is a component program element. Without prejudice to their review and adoption of other aspects of the 2020 OBMP Update, stakeholders requested Watermaster's prioritization of the approval and implementation of a SMP. Now after several months of stakeholder consideration, the Advisory Committee has requested Watermaster's consideration and discretionary approval of the Final Report Sections 2.1-2.6 as the 2020 SMP. The 2020 SMP will guide the development and drafting of potential amendments to the Peace Agreement and the OBMP Implementation Plan, as may be required and agreed by the Parties, the Advisory Committee's approval of any uniform rules, and subsequent submittal to the Court for direction to implement under its continuing jurisdiction.

Recommendations:

- Approve the 2020 Storage Management Final Report Sections 2.1-2.6 as the Storage Management Plan providing direction as an incremental step towards the preparation of the required documentation for storage management in a manner that is consistent with Watermaster's responsibilities under the Judgment.
- Direct staff and Counsel to support the Parties' efforts to develop an update to the OBMP Implementation Plan and Peace Agreement Amendment for Program Elements 8 and 9 (Storage and Storage & Recovery Programs) in a manner that is consistent with Watermaster's responsibilities to manage storage under the Judgment; with the objective to complete the update effort by July 30, 2020; and report progress to the Board monthly.
- Direct staff to concurrently complete a plan, with advice and assistance of the Pools and the Advisory Committee, to address the risk of potential quantities of stored water exceeding the cumulative amount authorized by the Peace Agreement and accounts for orderly use and distribution of excess quantities in a manner that comports with the directives of the Judgment.
- Direct staff to bring the entire 2020 OBMP for Board approval in September, after seeking advice and assistance from the Pool and Advisory Committee.

Financial Impact: There are no binding commitments created by the approval of the conceptual 2020 Storage Management Plan (Final Report Sections 2.1-2.6) and therefore no financial impact associated with the above recommendation.

Watermaster's function is to administer and enforce provisions of the Judgment and subsequent orders of the Court, and to develop and implement an Optimum Basin Management Program

ACTIONS:

Appropriative Pool – April 9, 2020: Adopted by majority approval to recommend Advisory Committee support Watermaster Board approval of the 2020 Storage Management Final Report Section 2.1-2.6 as the Storage Management Plan providing “guidance” for the preparation of the “desired” documentation. MVWD, MVIC, and Ontario voted against the motion.

Non-Agricultural Pool – April 9, 2020: The following action was reported following Confidential Session: While the NAP recognizes the urgency of completing the storage management process, at this time with various parties in the basin needing additional information before being able to move forward, the NAP does not currently have any additional guidance to provide.

Agricultural Pool – April 9, 2020: By unanimous vote recommend to the Advisory Committee that action on the Storage Management Plan be postponed and that this item be brought back before the Ag Pool at the next meeting.

Advisory Committee – April 16, 2020: No action was taken; the item will not be placed on the April Board agenda

Watermaster Board – April 23, 2020:

Appropriative Pool – May 14, 2020: Provided advice and assistance in the form of a Resolution adopted by majority vote; City of MVWD, MVIC, and Ontario voted against the motion to adopt the Resolution.

Agricultural Pool – May 14, 2020: Unanimously adopted motion as follows: The Ag Pool opposes the 2020 Storage Management Plan due to deficiencies in the interrelated Safe Yield Recalculation in addition to the lack of a storage implementation plan.

Non-Agricultural Pool – May 15, 2020: Offered no further advice or assistance.

Advisory Committee – May 21, 2020: Adopted (majority approval) motion to recommend Watermaster Board approval of the Storage Management Plan in context of the May 14, 2020 Appropriative Pool Resolution; 57.6 votes in favor; 42.4 votes against.

Watermaster Board – May 28, 2020: Approved staff recommendation by majority vote Mr. Feenstra, alternate for Board Member Hofer, cast a dissenting vote.

BACKGROUND

Storage of any water in the aquifer storage capacity of the Chino Basin is subject to the control of Watermaster under the continuing jurisdiction of the Court. (Judgment ¶ 11, 12, 14, 15, Exhibit “G” ¶ 7, Exhibit “H”, ¶ 12.). In June of 2000, with the consent of the parties to the Judgment and under the direction of the Court, the Peace Agreement established a plan for the administration of aquifer storage capacity and for the management, storage, recovery and transfer of stored water, reserving discretion as provided therein. (Peace Agreement Section 5.2.). For the past 20 years, Watermaster has administered storage in Chino Basin according to the storage management plan described in Program Element 8 of the 2000 Optimum Basin Management Program (OBMP) Implementation Plan, as authorized by the Peace Agreement and as ordered by the Court.

Watermaster has a duty to review storage applications and to disapprove an application if it would cause Material Physical Injury. (Peace Agreement §5.2(a)(iii)). The existing OBMP storage management plan consists of the administration of groundwater production, replenishment, recharge, and storage within the defined Safe Storage Capacity (SSC). As defined in the OBMP Implementation Plan, the SSC is the difference between safe storage and the operational storage requirement (OSR). The allocation and use of storage space in excess of the SSC would *preemptively require mitigation*; that is, mitigation must be defined, and resources committed to mitigation *prior to its allocation and use*. (OBMP Implementation Plan at p. 38.) For the purposes of defining the SSC, the OSR was considered to be the storage or volume in the aquifer capacity of the Chino Basin that is necessary to maintain the Safe Yield.

At the time the OBMP Implementation Plan was drafted, the OSR was estimated in the development of the OBMP to be about 5.3 million acre-feet (ac-ft). This storage value was set as the estimated storage in the Chino Basin in 1997. The OBMP Implementation Plan defined “Safe Storage” as an estimate of the maximum amount of storage space in the basin that can be used and not cause significant water-quality and/or high-groundwater related problems. At the time of the OBMP Implementation Plan, Safe Storage within the Chino Basin was estimated to be about 5.8 million ac-ft. Consequently, the SSC (the amount of aquifer capacity available for storage without the need for advance mitigation) was defined as a 500,000 ac-ft.

Environmental impact analysis was undertaken for the entire OBMP Implementation Plan, inclusive of the storage management plan within PE 8 under the Final Programmatic Environmental Impact Report (PEIR) certified by IEUA in 2000. By its own resolution and by order of the Court, Watermaster agreed that any future actions under the OBMP Implementation Plan would be subject to “CEQA documentation”. (See Peace Agreement Attachment “A” § 5.) IEUA was designated to be the Lead Agency for the OBMP Implementation Plan (Peace Agreement § 2.4.) as well as by Court Order.

Subsequently, IEUA completed further action pertinent to the management of the SSC by making a “consistency finding” in connection with Watermaster’s approval of the Dry-Year Yield Agreement with the Metropolitan Water District in 2002. Again, in 2017 the IEUA Board of Directors prepared an Addendum to the PEIR finding that the SSC could be temporarily increased from 500,000 to 600,000af through June 30, 2021 without causing Material Physical Injury or the need for advance mitigation of adverse impacts as otherwise required by the OBMP Implementation Plan. (Peace Agreement § 5.2(c)(iii); OBMP Implementation Plan Program Element 8 (c)vii; (c)viii and the California Environmental Quality Act (CEQA)).

DISCUSSION

Based upon the historical success of storage activities under the Peace Agreement and OBMP Implementation Plan, Watermaster anticipated that the Parties would soon approach the defined Safe Storage Capacity limit and initiated a series of stakeholder discussions beginning in December 2016 with the intention of developing an orderly process to increase the aquifer capacity available for stored water without the parties incurring an advance mitigation responsibility.

Watermaster’s function is to administer and enforce provisions of the Judgment and subsequent orders of the Court, and to develop and implement an Optimum Basin Management Program

Since that effort began Watermaster's Engineer, with active stakeholder involvement and participation over several workshops, developed a framework for the evaluation of the potential impacts of the storage of water in Chino Basin. The results of this effort have been documented in a report titled Chino Basin Storage Framework Investigation (SFI), finalized in January 2019 (Attachment 1).

Following the development of the SFI, Watermaster's Engineer, with input from stakeholders, developed a list of technical issues related to storage management to be considered in development of a 2020 Storage Management Plan (2020 SMP). The identified issues were compiled in a report titled 2020 SMP White Paper (Appendix A of Attachment 2).

The Peace Agreement, among other things, not only prevents Watermaster from approving a storage agreement that will cause Material Physical Injury, it includes directives to Watermaster on the allocation of storage capacity and provides assurances to the Parties when transferring water from storage. These assurances arise from the Peace Agreement and have served to streamline storage and transfer over the past two decades. These clear rules are the cornerstone of the storage, recovery, and transfers that occur within the Basin.

Building on the SFI and projections of water supply and demand provided by the parties in 2018, Watermaster held a series of stakeholder workshops to develop the 2020 SMP, and address the issues identified in the White Paper. Sections 2.1-2.6 of the 2020 Storage Management Plan Final Report dated December 11, 2019 (Attachment 2) contain suggested subjects for *potential amendment* of the OBMP Implementation Plan Program Elements 8 and 9, amendments of the Peace Agreement and amendments to the Watermaster Rules and Regulations.

Amendments to the Peace Agreement and to the OBMP Implementation Plan require consent of the Parties, although consent may not be unreasonably withheld. (Peace Agreement §10.14.) Accordingly, the subjects described in 2020 SMP Sections 2.1-2.6 will require formal documentation to become operative. This means that amendments to the Peace Agreement and to the OBMP Implementation Plan will require consideration and consent by the Parties to the Peace Agreement – in some form – before they are submitted to the Court for review under its continuing jurisdiction. To the extent changes include new uniform rules, approval of the Advisory Committee will also be required.

Finally, Watermaster must first conclude that increasing storage quantities in excess of the Safe Storage Capacity will not cause Material Physical Injury (Peace Agreement §5.2(a)(iii)) and ensure that every "Project" authorized under the Peace Agreement has satisfied CEQA. (Peace Agreement §2.1.). The standards for evaluating Material Physical Injury and adverse impacts are separate and have substantive differences. This means, that as pre-requisite to authorizing storage in excess of the SSC, Watermaster must find that the increased storage will not cause Material Physical Injury and IEUA, as the entity designated to conduct CEQA review under the OBMP, must analyze project impacts under CEQA and adopt reasonably feasible mitigation. For all these reasons, approval of Sections 2.1-2.6 of the 2020 SMP Final Report does not constitute a binding commitment by the Parties and/or Watermaster to any specific actions described therein.

The components of the SMP set forth in Sections 2.1-2.6 (attached hereto) are as follows:

- [1] provisions for use of storage space for the parties and for entities engaging in Storage and Recovery activities;
- [2] reservation of priority of recharge basins for Watermaster recharge obligations;
- [3] provisions for storage management activities of the parties including transfers and mitigation of impact on net recharge and Safe Yield;
- [4] terms for evaluation of Storage and Recovery programs;
- [5] creation of "evergreen" storage agreements; and
- [6] guidelines for future updates of the 2020 SMP.

In 2019, with active participation by the parties, Watermaster developed an update of the 2000 OBMP. The final 2020 OBMP report, circulated on January 24, 2020, includes updates to most OBMP Program Elements (PEs). The parties', Pools' and Advisory Committee positions on the balance of the 2020 OBMP Update are not affected in any way by the recommended stand-alone approval of the 2020 SMP. An approval of the 2020 SMP by the Watermaster Board would indicate support for the SMP as described. As the existing storage management plan is part of PE 8 of the OBMP Implementation Plan, which is set forth in Exhibit B to the Peace Agreement, an *updated OBMP Implementation Plan* developed and agreed to by the parties, Advisory Committee Approval of uniform storage rules, and a Court order will be necessary to direct Watermaster to implement the OBMP Implementation Plan as modified as described by the 2020 SMP within the broader umbrella of the 2020 OBMP Update. Stakeholders will have a continuing opportunity to provide input on the remaining scope and content of the updated OBMP Implementation Plan, as this is brought to completion in the upcoming months.

The 2020 OBMP, which includes the 2020 SMP, is the subject of further CEQA analysis currently being undertaken IEUA. A Draft SEIR was released on March 27, 2020 for public comment and the approval of the SMP as provided herein does not bind or pre-commit IEUA to any action of any kind. Watermaster and the Parties are bound by the Peace Agreement, the OBMP Implementation Plan and Court order instructing them to act in accordance with their terms. Watermaster lacks discretion to undertake any changes without further order of the Court. Moreover, neither IEUA nor any party to the Judgment is bound by the adoption of the SMP as described herein or may pre-commit to measures without Court authorization. Certification of the CEQA analysis on the entire 2020 OBMP, which includes the SMP, is reasonably anticipated to be certified in July 2020.

During its April 9, 2020 meeting the Appropriative Pool recommended that the Advisory Committee recommend Watermaster Board approval of the SMP. The Overlying (Non-Agricultural) Pool offered no further advice; and the Overlying (Agricultural) Pool recommended to the Advisory Committee to postpone its consideration and requested that the item is brought back for the Pool's consideration during its next meeting.

During its May 14, 2020 meeting the AP adopted a Resolution (Attachment 3) on the subject matter. The OAP unanimously adopted a motion as follows: "the Agricultural Pool opposes the 2020 Storage Management Plan due to deficiencies in the interrelated Safe Yield Recalculation in addition to the lack of a storage implementation plan." During its May 15, 2020 meeting the ONAP considered the subject and offered no further advice.

During its May 21, 2020 meeting the Advisory Committee adopted a motion to recommend that, consistent with the May 14, 2020 AP Resolution, Watermaster Board approve the SMP. The resolution confirms the understanding and intent of AP parties that the SMP is a guidance/planning document and is not binding on the Parties as they negotiate the necessary update of the OBMP Implementation Plan.

STAFF RECOMMENDATION

The staff recommendation is based on the following considerations:

Basin management to maximize the beneficial use of water for all Parties will require new programs and actions to deal with future challenges. Examples include coordinated pumping, alternate supplies, management of water quality, effective Storage and Recovery programs. All these, including a new Storage Management Plan, were envisioned by the Parties during the OBMP Update Listening Sessions that were held throughout 2019, and are expressed in the 2020 OBMP.

The Parties will need an updated Implementation Plan and a corresponding Peace Agreement Amendment for the entire 2020 OBMP, and they will also need a certified SEIR. The SEIR is on track for certification in July 2020.

The AP reports that it is making substantial progress in the development of an update to the OBMP Implementation Plan that is narrowly focused on storage management. The AP has represented that a draft will be circulated to all parties imminently. Staff is optimistic that the AP will propose a draft for consideration by the other Pools that will thoughtfully propose required changes, address the interests of the other Pools, and not infringe on Watermaster's decree administration responsibilities under the Judgment.

For the Parties to be successful in the focused effort, it is constructive for the Board to approve the SMP as developed by the Parties. The approval demonstrates incremental progress towards the objective of continuing orderly management of storage, optimizing use of the Basin's storage capacity without causing undesirable results.

The parties will require support from Watermaster staff and Counsel in completing the SMP-focused Implementation Plan update and Peace Agreement Amendment. To that end it is recommended that Watermaster Board direct staff and Counsel to support the Parties as necessary.

Time is of the essence and, it is important to complete not only the documents that effectuate the SMP within a reasonable timeframe, if we are to avoid implementation of a strategy to address increases in storage quantities in excess of those permitted by the Peace Agreement and the OBMP Implementation Plan. To address the risk of delay, for reasons beyond the control of Watermaster, with the advice and assistance of the Pools and the Advisory Committee, Watermaster will prepare and finalize a plan to address the orderly management of quantities stored water in excess of the SSC. In addition, the relationship between Storage Management and the balance of measures in the 2020 OBMP require the preparation of effectuating documents of the entire 2020 OBMP.

In light of the long-term significance of the planning effort, regular updates to the Watermaster Board are recommended.

ATTACHMENTS

1. Storage Framework Investigation (WEI, January 2019) – Click on this [link](#) to access.
2. 2020 Storage Management Plan (WEI, December 11, 2019) – Click on this [link](#) to access.
3. May 14, 2020 AP Resolution Regarding Watermaster's Consideration of Approval of the 2020 Storage Management Plan Final Report Dated December 11, 2019