

***Minutes***  
**CHINO BASIN WATERMASTER**  
**WATERMASTER BOARD MEETING**

*November 17, 2011*

The Watermaster Board Meeting was held at the offices of the Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, CA, on November 17, 2011 at 11:00 a.m.

**WATERMASTER BOARD MEMBERS PRESENT**

Ken Willis, Chair  
Steve Elie  
Bob Bowcock  
Bob Kuhn  
Charles Field  
Paula Lantz  
Tom Haughey  
Paul Hofer  
Geoffrey Vanden Heuvel

West End Consolidated Water Company  
Inland Empire Utilities Agency  
Vulcan Materials Company (Calmat Division)  
Three Valleys Municipal Water District  
Western Municipal Water District  
City of Pomona  
City of Chino  
Agricultural Pool  
Agricultural Pool

**Watermaster Staff Present**

Danielle Maurizio  
Joe Joswiak  
Gerald Greene  
Sherri Molino

Senior Engineer/Interim CEO  
Chief Financial Officer  
Senior Environmental Engineer  
Recording Secretary

**Watermaster Consultants Present**

Scott Slater  
Michael Fife  
Mark Wildermuth

Brownstein, Hyatt, Farber & Schreck  
Brownstein, Hyatt, Farber & Schreck  
Wildermuth Environmental Inc.

**Others Present Who Signed In**

Rosemary Hoerning  
Raul Garibay  
Marty Zvirbulis  
Jo Lynne Russo-Pereyra  
Hank Stoy  
Mohamed El-Amamy  
John Mura  
Dave Crosley  
Sheri Rojo  
Josh Swift  
Seth Zielke  
Jeff Pierson  
Pete Hall  
Bob Feenstra  
Terry Catlin  
Craig Miller  
Eunice Ulloa  
David De Jesus  
Curtis Paxton

City of Upland  
City of Pomona  
Cucamonga Valley Water District  
Cucamonga Valley Water District  
Cucamonga Valley Water District  
City of Ontario  
City of Chino Hills  
City of Chino  
Fontana Water Company  
Fontana Union Water Company  
Fontana Union Water Company  
Agricultural Pool – Crops  
State of California, CIM  
Agricultural Pool – Dairy  
Inland Empire Utilities Agency  
Inland Empire Utilities Agency  
Chino Basin Water Conservation District  
Three Valleys Municipal Water District  
Chino Desalter Authority

Chair Willis called the Watermaster Board meeting to order at 11:00 a.m.

**PLEDGE OF ALLEGIANCE**

**AGENDA - ADDITIONS/REORDER**

There were no additions or reorders made to the agenda.

**I. CONSENT CALENDAR**

**A. MINUTES**

1. Minutes of the Watermaster Board Meeting held October 27, 2011

**B. FINANCIAL REPORTS**

1. Cash Disbursements for the month of September 2011
2. Watermaster VISA Check Detail for the month of September 2011
3. Combining Schedule for the Period July 1, 2011 through September 30, 2011
4. Treasurer's Report of Financial Affairs for the Period September 1, 2011 through September 30, 2011
5. Budget vs. Actual July 2011 through September 30, 2011

**C. WATER TRANSACTION**

1. **Consider Approval for Notice of Sale or Transfer** – The lease and/or purchase of 781.000 acre-feet of water from San Antonio Water Company to the City of Ontario. This lease is made first from San Antonio's net underproduction in Fiscal Year 2011-2012, with any remainder to be recaptured from storage. Date of Application: September 1, 2011

*Motion by Kuhn second by Elie, and by unanimous vote*

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

**II. BUSINESS ITEMS**

**A. 85/15 RULE POLICY – Information Only**

Ms. Maurizio stated this item is for the 85/15 Rule Policy and is being brought to the Board today as an information only item as this is an Appropriative Pool issue. This is an interpretation or an application of the Appropriative Pool Pooling Plan and the issue was recently brought forward about the handling of how the 85/15 Rule was being applied to water transfers and how it would also be applied to preemptive storage. This matter has been discussed since the September Pool meetings and Watermaster held a workshop in September. The Appropriators held a special meeting in November about this item also. The outcomes of those meetings was that any changes or interpretation to the 85/15 Rule was to be on a looking forward only basis; there was past discussion in going back and correcting up to the last four years. The Appropriative Pool also developed a draft Policy out of that meeting. The Policy for the 85/15 Rule will apply only to the exact amount of the transfer that is used to satisfy a parties overproduction, and they made no changes to the fact that all replenishment purchases made by Watermaster will have the 85/15 Rule applied to it when the party is subject to 85/15 Rule. Also within that Policy it is stated they will revisit the Policy within the next twelve months to discuss any aspect of it, including its application to preemptive replenishment. This Policy went through the Appropriative Pool and was approved unanimously with one small language modification made to it. The Policy that is in your meeting package today is the updated Policy. Ms. Maurizio noted there was no action taken by the Agricultural or Non-Agricultural Pools. There was no further discussion.

*No motion was made.*

**B. PREEMPTIVE REPLENISHMENT AGREEMENTS**

Counsel Slater stated this Board had the subject of preemptive replenishment arise by virtue of action on August 25, 2011 when this board took two actions by motions that were unanimously approved. The first motion was to convert the Storage Agreement that was presented in concept into a direction to Watermaster staff to prepare an agreement under the label of preemptive replenishment, and instructed Watermaster staff and counsel to execute such agreements consistent with those directives. The second motion was asking for a broad overarching policy to

be developed with safeguards and rules pursuant to which Watermaster would evaluate and execute preemptive replenishment purchasing opportunities in the future; this is what took place on August 25, 2011. Counsel Slater stated in the month of October this Board received some comments from various stakeholders about the fairness of the intent to move in the direction that the Board had selected and authorized on August 25<sup>th</sup>, and in raising some overarching policy concerns. The Board took that testimony, and having considered the fact that it adopted an action that was different than the recommended action from the Advisory Committee in August, the Board then set a special meeting for November 28, 2011 to allow the Board to provide adequate notice to the Advisory Committee, and to set the stage for it to finalize the Preemptive Replenishment Agreements. That special meeting was noticed to the Advisory Committee and, prior to the Advisory Committee meeting this morning, the Pools each met and had their own internal discussions, and there was a considerable amount of discussion among the stakeholders in taking into account their own concerns and issues, as well as listening to the policy direction that had been developed by the Board. Counsel Slater stated in his opinion this is an olive branch generated by the stakeholders in an effort to meet the Board in terms of its policy objectives with regard to authorizing preemptive replenishment. Counsel Slater stated it is designed to accommodate the Board's desires to approve Preemptive Replenishment Agreements, to do so without assessing losses, to embrace the notion of having a broad comprehensive policy to deal with preemptive replenishment in the future, and to make sure the authorization of these agreements is now done without precedent for future arrangements in how the future will be determined under a consensus based set of Rules & Regulations. Counsel Slater stated this also allows the resolution to be tucked into the existing Recharge Master Plan filing. Counsel Slater stated the motion made by the Advisory Committee has been typed out and a copy is in front of each director. Counsel Slater stated there are members of the Advisory Committee here if there are questions regarding the motion or motions intent, and then Ms. Maurizio can address the mechanics of Watermaster's payment to Inland Empire Utilities Agency (IEUA) while trying to avoid a penalty for late payment. Counsel Slater read the motion made by the Advisory Committee this morning on this matter and noted it was moved by a unanimous vote. Mr. Vanden Heuvel stated the motion appears to have three or four motions passed in unison; however, they are somewhat distinct actions. Mr. Vanden Heuvel offered comment and inquired about the Advisory Committee's action, which was different than the Board's motion of August 25, 2011, noting the Advisory Committee's motion was passed with a unanimous vote – does the prior action of the Board become a moot point. Mr. Vanden Heuvel inquired if it would be possible for this Board to pass these motions presented immediately. Counsel Slater stated it would be legally possible for this Board to act on the motions which were presented to this Board today on the basis they were approved by the Advisory Committee unanimously. Counsel Slater stated it would also be possible to continue with the special meeting in the event the Board decided today to do something different than pass the motions presented by the Advisory Committee. Counsel Slater stated if this Board is contending to conform your action solely to what was adopted by the Advisory Committee today, this Board can void the need for the special meeting scheduled for November 28, 2011. A lengthy discussion regarding this matter, the motions presented, and procedures ensued. Testimony from Mr. Zvirbulis of the Advisory Committee regarding the unanimously approved motions he made today was received. A discussion regarding the penalties ensued. Mr. Catlin stated any penalties for any invoice that is issued by IEUA requires a board of director's approval and noted IEUA has those penalties in place because we, in turn, get penalties from MWD; no penalties will be incurred by IEUA until November 28, 2011 when IEUA's payment is due to MWD. Mr. Kuhn stated however this is resolved Watermaster needs to issue a check to IEUA immediately, and if the special meeting needs to still take place for that to happen then that is what needs to be done. Counsel Slater stated it is hoped to have an agreement because the City of Ontario will not pay until they have an agreement signed; they have seen the agreement and it is his understanding the agreement is acceptable to them, but paper needs to change hands. A discussion regarding the agreements ensued. Mr. Vanden Heuvel offered comment on this matter and also stated he is going to make a motion to ratify and endorse the motions made by the Advisory Committee today. Mr. Kuhn stated he would second the motion. Ms. Maurizio stated she believes Jurupa Community Services District might have to take the agreement back

to their board. Ms. Maurizio noted Watermaster has some money in reserves as one option, even if the agreements are not completely signed. Right now, Watermaster does not have the authority to pay it because the agreements are not signed; Watermaster can be given the authority to pay it from reserves and write a check to IEUA soon. Counsel Slater offered comment on the agreements. Mr. Vanden Heuvel offered comment on the agreements not being signed yet. Mr. Vanden Heuvel stated let's settle the policy by passing this motion and the staff stuff will fall into place, and we will get IEUA paid. Counsel Slater inquired if Watermaster staff writes the check prior to the agreements being signed, or will staff wait to have the agreements in place before staff writes the check. Mr. Vanden Heuvel stated if the motion on the table passes, staff has direction to get these agreements done within the next ten days to avoid any penalties. Mr. El-Amamy stated the City of Ontario already has pre-approval for those agreements, and as soon as they receive them they will be signed and a check will be cut. Mr. Vanden Heuvel stated his motion is in order. Mr. Vanden Heuvel stated the last motion is more looking forward policy wise and he read the last motion. Mr. Vanden Heuvel stated he is concerned about the policy of having Storage Agreements with the municipals and it is significant, and there are some policy considerations that should to be explored and discussed in the family here as we move forward and develop those long-term policies. Mr. Kuhn stated that should be part of a workshop process. Chair Willis called for the question.

*Motion by Vanden Heuvel and second by Kuhn, and by unanimous vote*

***Moved to ratify and endorse the motions made by the Advisory Committee meeting on November 17, 2011: Moved to approve the signed City of Chino Agreement and authorize approval of the pending Jurupa Community Services District (JCSD) Agreement, subject to their approval and review by JCSD legal counsel for subsequent agreement by JCSD. Moved to authorize Watermaster staff for the development and execution of a consistent agreement with the City of Ontario with terms consistent with the City of Chino and JCSD Agreements to cover the balance of the purchase of the preemptive replenishment water; all agreements would be subject to terms that are non-precedent setting. Moved to have Watermaster legal counsel file an extension for the Recharge Master Plan filing date of December 17, 2011, out 180 days and include rules for preemptive replenishment in the filing. Moved to authorize, during the extended court extension period, to develop a workout plan by working with the all the parties in an open workshop process. Moved to authorize Watermaster staff and Watermaster legal counsel to work on developing terms of an agreement with Inland Empire Utilities Agency (IEUA) for a Preemptive Storage Agreement, and other related terms, regarding preemptive replenishment for future water purposes, as presented***

Ms. Lantz inquired about the agreements with Fontana Water Company and Niagara Bottling Company because they were not mentioned in this discussion; however, they are mentioned in the staff letter as having been executed, noting they do have a different name of a Preemptive Replenishment Storage Agreement; are they being calculated with the loss. Ms. Maurizio stated yes, they are subject to losses.

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

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

##### **1. October 28 Hearing**

Counsel Slater stated a lengthy hearing took place on October 28, 2011 with Judge Reichert. Counsel offered comment on the details of the hearing. Counsel Slater noted he felt the questions and presentations given at this hearing made it a very good educational hearing for the Judge. Counsel Slater stated Judge Reichert also took appearances from everyone in the courtroom. Counsel Slater stated there was an item that came up regarding the interpretation of the CDA Resolution that had not been discussed before, which especially pertained to the Agricultural Pool. Counsel Slater stated one of the things

the CDA Resolution does is create an administrative process for Agricultural Pool members who may be affected by the operations of the Desalter wells. Counsel Slater stated there are forms to be filled out and there is a process that needs to be gone through with the CDA in order to make a claim. Counsel Slater stated the question the Judge raised was that at the end of that process, as described in the Resolution, the CDA board makes a determination whether the claim is valid or not, and whether the CDA is going to pay or not, and the Judge commented on if the CDA was the judge, jury, and executioner – and noted if that was the case, then he would be very uncomfortable if that was the situation. Counsel Slater stated the Judge requested clarification that, that was not the case and that any party that was dissatisfied with the decision of the CDA would then have all their existing legal rights to be able to challenge the determination that the CDA made. Counsel Slater stated his interpretation of the Resolution was that the parties did not forfeit their legal rights and that the approval of the Resolution did not take away those legal rights. Counsel Slater stated the Judge expressed that was his understanding too; however, there was no legal representation at the hearing. Counsel Slater stated he indicated to the Judge that this would be a good issue to shore up, and committed to communicate with the CDA and Agricultural Pool counsels, and come back with something so that there is a clear record and there is no ambiguity if there is a problem. Counsel Slater stated Counsel Fife has contacted those counselors and received clarification that the private well owners do retain all their rights to challenges on CDA decisions. Counsel Slater stated some sort of stipulation or document will needed to provide to the court on this matter to ensure there is a clear record.

2. Restated Judgment

Counsel Slater stated the Restated Judgment was presented to Judge Reichert at the October 28, 2011 hearing as a “receive and file” action. Counsel Slater noted just prior to the hearing, the Non-Agricultural Pool asked that a disclaimer be put in that it was just a receive and file Restated Judgment so that the operative legal document would remain the 1978 Judgment, plus the amendments made throughout the course of time. Counsel Slater stated Judge Reichert indicated that was not how he wanted it done and that he wants the Restated Judgment to be the official document. Judge Reichert asked that Watermaster come back to his court with a motion that presents it as the operative legal document; the 1978 Judgment would be vacated, and the 2011 Judgment would become the official Judgment. Counsel Slater offered comment on this matter and noted the only real differences would be a reference to page numbers. Counsel Slater stated that will then be framed as a motion and then it will be brought through the Watermaster process. Mr. Elie stated he expected there to be some kind of controversy over the Restated Judgment and inquired if it’s all vetted and everyone is good. Counsel Slater stated it was fully vetted, and there was a concern expressed from the counsel of the Non-Agricultural Pool that it only be a reference copy; the whole point of doing this was so that the Judge would not have to thumb through fifteen amendments to figure out what the real Judgment was. Counsel Slater stated the court did say the right thing in asking for a formal motion to make it the official copy and that is what is going to be done as requested by the court.

3. December 17 Recharge Master Plan Filing

Counsel Slater stated under the October, 2010 court order which approved the Recharge Master Plan the court ordered an update to be provided by December 17, 2011, which is six months following the due date for the Urban Water Management Plan (UWMP). Counsel Slater stated in the 2010 filing Watermaster indicated that when the UWMP came out, it could change the Recharge Master Plan so the court requested an update six months after that happened. Counsel Slater stated it is expected to move that court hearing date out 180 days.

**B. WATERMASTER ENGINEERING REPORT**1. Groundwater Model Update

Mr. Wildermuth stated one of the items required by the court order from last October 2010 to be included in this update to the court was an analysis of projected groundwater production and replenishment. Mr. Wildermuth stated this presentation was given to all three Pools; however, based on comments received at those meetings a revised presentation is going to be presented today. Mr. Wildermuth gave the updated Groundwater Production Projection 2011 Update: Preliminary Results presentation in detail. Mr. Wildermuth noted this report was sent this morning to Watermaster, the Chino Basin Water Conservation District, and IEUA electronically, and after their review it is expected to be brought through the Watermaster process. Mr. Wildermuth reviewed the Projected Production in the Chino Basin Modified 2010 UWMPs and Efficient Market Assumptions chart in detail. Mr. Wildermuth reviewed the next steps in detail. Mr. Vanden Heuvel inquired about recycled water having any regulatory barriers to getting 21,000 acre-feet of recycled water a year. Mr. Wildermuth stated he is not prepared to answer that question. Mr. Vanden Heuvel stated the requirement to mix an acre-foot of fresh water with an acre-foot of recycled water no longer exists. Mr. Wildermuth stated that exists, it is just not clear on how it will be accomplished under this scenario yet. Mr. Wildermuth stated that is something that needs to be worked out with IEUA. Mr. Vanden Heuvel stated what this tells us is that we don't really need to do anything and that we have plenty of water. Mr. Wildermuth stated if this was the end result that might be a valid conclusion; however, he is not personally convinced it's ready for that conclusion. A discussion regarding the presentation and comments presented ensued. Mr. Vanden Heuvel offered final comments on this matter.

2. General Electric/City of Ontario Material Physical Injury Analysis

Mr. Wildermuth stated there is a draft report almost completed on the Material Physical Injury Analysis for the General Electric Injection Project. Mr. Wildermuth stated that report will be submitted to Watermaster staff for review shortly and then it will be brought through the entire Watermaster process in December.

**C. CEO/STAFF REPORT**1. RWQCB Basin Plan Amendment

Ms. Maurizio stated this item has been discussed at numerous meetings. Ms. Maurizio stated the concept for this item is Watermaster staff and engineering consultants have been asking the Regional Water Quality Control Board (RWQCB) to amend the Basin Plan so that Watermaster is not responsible to perform so much surface water sampling on the Santa Ana River. Ms. Maurizio stated the cost for that sampling is approximately \$200,000 per year, and this reduction would save Watermaster approximately \$150,000 a year. Ms. Maurizio reviewed the sampling which is being done presently and then what is being asked for in the reduction in detail. Ms. Maurizio stated it was anticipated the RWQCB would have this item on their December calendar; however, it is understood it has been now placed on the January, 2012 agenda for consideration. Mr. Vanden Heuvel stated he had forgotten about this and inquired if there has been any agreement with RWQCB staff on the substance of the Basin Plan Amendment. Mr. Wildermuth stated absolutely, a long time ago. Mr. Vanden Heuvel offered history on this RWQCB issue and inquired as to why they can't do anything about this matter until February, and why it can't be expedited if there is no disagreement. Mr. Wildermuth stated his office and Watermaster have tried; it was blown off the calendar originally because of the fine and then, during discussions with their staff, we were told next month and then maybe the following month, until it was pushed off until February. Mr. Vanden Heuvel asked that somebody take this to a higher level. Mr. Vanden Heuvel stated that what he would like this Board to do is to authorize our chairman to talk to their chairman. Mr. Vanden Heuvel stated he opens the invitation for any other party who can support Watermaster in this matter. Mr. Ken Jeske stated he would assist and would get with Chair Willis to attempt to get this on the December RWQCB consent calendar. A discussion regarding this matter ensued. Mr. Wildermuth

stated a conversation with Kurt Berchtold would help. Mr. Feenstra stated he and the Agricultural Pool's legal counsel, Tracy Egoscue, could also assist in this important matter. Mr. Vanden Heuvel offered final comments on this matter.

2. Recharge Update

Ms. Maurizio stated the most recent Recharge spreadsheet is available on the back table for review. Ms. Maurizio reviewed the recharged numbers in detail.

Added: 3. Meeting Date Updates

Ms. Maurizio reviewed the meeting date changes due to the upcoming Thanksgiving and Christmas holidays. Ms. Maurizio stated a Land Subsidence Committee meeting has been added to the upcoming meeting schedule for Wednesday, November 16, 2011 at 1:00 p.m. here at Watermaster.

**IV. INFORMATION**

1. Cash Disbursements for October 2011

No comment was made.

2. Newspaper Articles

No comment was made

**V. COMMITTEE MEMBER COMMENTS**

Mr. Hofer inquired if there any recent updates to the Santa Ana Sucker issue. Counsel Fife stated there is nothing new to report on.

Mr. Kuhn stated at our last Board meeting this Board decided to wait until our January meeting to fly the Watermaster CEO position. Mr. Kuhn asked for permission of the Board to work with the interim CEO and possibly look at what we flew for that position last time, and possibly send a copy of that to each of the Pool chairs. Then we can see if we could not fly that position in December so that when the new Board comes on in January, they have something physically to look at in the way of applications rather than waiting until January for them to give instruction. Mr. Kuhn stated by waiting until January, Watermaster may not see a new CEO until April, May, or even June. Chair Willis stated he does not object to doing this sooner as opposed to doing it later. Chair Willis offered comment on Board members leaving who have an understanding of the workings of the Watermaster process. Chair Willis stated he would like to appoint Mr. Kuhn to line up the other top two candidates from the last go around. Mr. Kuhn stated he is not asking for that at this point in time but that he got the impression from the last Board meeting that it wanted to just fly the position and wanted input from the Pools. Mr. Kuhn offered comment on this matter. Mr. Vanden Heuvel stated he thinks what the Personnel Committee chair is asking for is very appropriate and he supports that; however, it seems premature to interview any person at this point in time. Mr. Vanden Heuvel stated input from the Pools is definitely needed. Mr. Elie stated he agrees to get it vetted so that by the next Board meeting if there is anything to be decided this Board can decide it at the December meeting, and maybe then send something out to the world if instructed on December 15, 2011.

**VI. OTHER BUSINESS**

No comment was made

The regular open Watermaster Board meeting was convened to hold its confidential session at 12:00 p.m.

**VII. CONFIDENTIAL SESSION - POSSIBLE ACTION**

Pursuant to Article 2.6 of the Watermaster Rules & Regulations, a Confidential Session may be held during the Watermaster committee meeting for the purpose of discussion and possible action.

1. Aqua Capital Management versus California Steel Industries

The confidential session concluded at 12:04 p.m.

There was no reportable action from the confidential session.

**VIII. FUTURE MEETINGS**

<b>Wednesday, November 16, 2011</b>	<b>1:00 p.m.</b>	<b>Land Subsidence Committee Meeting</b>
Thursday, November 17, 2011	9:00 a.m.	Advisory Committee Meeting @ CBWM
<b>* Thursday, November 17, 2011</b>	<b>11:00 a.m.</b>	<b>Watermaster Board Meeting @ CBWM</b>
Monday, November 28, 2011	1:30 p.m.	Special Watermaster Board Meeting @ CBWM
Thursday, December 8, 2011	9:00 a.m.	Appropriative Pool Meeting @ CBWM
Thursday, December 8, 2011	11:00 a.m.	Non-Agricultural Pool Conference Call Meeting
Thursday, December 8, 2011	1:00 p.m.	Agricultural Pool Meeting @ CBWM
Thursday, December 15, 2011	8:00 a.m.	IEUA DYY Meeting @ CBWM
Thursday, December 15, 2011	9:00 a.m.	Advisory Committee Meeting @ CBWM
<b>** Thursday, December 15, 2011</b>	<b>11:00 a.m.</b>	<b>Watermaster Board Meeting @ CBWM</b>

\* **Note:** Watermaster Board meeting date change due to the Thanksgiving holiday

\*\* **Note:** Watermaster Board meeting date change due to the Christmas holiday

Chair Willis dismissed the Watermaster Board meeting at 12:04 p.m.

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

Minutes Approved: December 15, 2011