

Minutes
CHINO BASIN WATERMASTER
WATERMASTER BOARD MEETING

November 15, 2012

The Watermaster Board Meeting was held at the offices of the Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, CA, on November 15, 2012 at 11:00 a.m.

WATERMASTER BOARD MEMBERS PRESENT

Bob Kuhn, Chair
Jim Curatalo
Paula Lantz
Terry Catlin
Bob Bowcock
Charles Field
Peter Rogers
Jeff Pierson
Bob Feenstra

Three Valleys Municipal Water District
Fontana Union Water Company
City of Pomona
Inland Empire Utilities Agency
Vulcan Materials Company (Calmat Division)
Western Municipal Water District
City of Chino Hills
Agricultural Pool
Agricultural Pool

WATERMASTER BOARD MEMBERS ABSENT

Steve Elie
Geoffrey Vanden Heuvel
Paul Hofer

Inland Empire Utilities Agency
Agricultural Pool
Agricultural Pool

Watermaster Staff Present

Peter Kavounas
Danielle Maurizio
Joseph Joswiak
Sherri Molino

General Manager
Assistant General Manager
Chief Financial Officer
Recording Secretary

Watermaster Consultants Present

Scott Slater
Brad Herrema
Mark Wildermuth
Michael Cruikshank

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

Others Present

Pete Hall
Ken Jeske
Rick Hansen
David DeJesus
Marty Zvirbulis
Jo Lynne Russo-Pereyra
Hank Stoy
Jack Safely
Raul Garibay
Curtis Aaron
Dave Crosley
Rosemary Hoerning
Scott Burton
Dennis Mejia
Ron Craig
Mike Maestas
Nadeem Majaj

Ag Pool – State of California – CIM
California Steel Industries
Three Valleys Municipal Water District
Three Valleys Municipal Water District
Cucamonga Valley Water District
Cucamonga Valley Water District
Cucamonga Valley Water District
Western Municipal Water District
City of Pomona
City of Pomona
City of Chino
City of Upland
City of Ontario
City of Ontario
City of Chino Hills
City of Chino Hills
City of Chino Hills

Sheri Rojo
Eunice Ulloa
Craig Miller
Tom Harder
Todd Corbin
Chuck Hays
Eddy Beltran

Fontana Water Company
Chino Basin Water Conservation District
Inland Empire Utilities Agency
Jurupa Community Services District
Jurupa Community Services District
City of Fontana
Kidman Law LLP

Chair Kuhn 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 25, 2012

B. FINANCIAL REPORTS

1. Cash Disbursements for the month of September 2012
2. Watermaster VISA Check Detail for the month of September 2012
3. Combining Schedule for the Period July 1, 2012 through September 30, 2012
4. Treasurer's Report of Financial Affairs for the Period September 1, 2012 through September 30, 2012
5. Budget vs. Actual Report for the Period July 1, 2012 through September 30, 2012

Motion by Bowcock, second by Field, and by unanimous vote

Moved to approve Consent Calendar items A through B, as presented

II. BUSINESS ITEMS

A. PHYSICAL SOLUTION TRANSFER RATE SUBSTITUTION

Mr. Kavounas stated our Watermaster general counsel will address this item. Counsel Slater stated pursuant to the Peace II Agreement there was an arrangement whereby water was made available by the Overlying Non-Agricultural Pool which could be effectively transferred to members of the Appropriative Pool. There was an agreed upon rate for the transfer of that water that was set forth in the agreement; however, that agreed upon rate, which was the Metropolitan Water District's (MWD) replenishment rate, is not in existence at the present time. Counsel Slater stated there was a question about what the substitute rate should be; the parties representing the Overlying Non-Agricultural Pool and the Appropriative Pool members have met and agreed upon a substitution rate, which is the rate of the MWD Tier I, less the 10% to be used in lieu of the replenishment rate. Counsel Slater stated this stipulation and agreement is for one year only, it is not with prejudice against future years negotiations; Watermaster has no reason or concern with regard to the fairness to that rate. Counsel Slater stated staff is looking for a recommendation from the Watermaster Board to proceed to file a pleading to set that agreed upon substitution rate and obtain the court's approval; a hearing is not necessarily needed for this matter.

Chair Kuhn inquired if there was any opposition from the Pools or Advisory Committee. Counsel Slater stated there was no opposition.

Motion by Catlin, second by Rogers, and by unanimous vote

Moved to approve staff recommendation for Fiscal Year 2012-2013 Substitute Physical Solution Transfer Rate and the legal motion, as presented

B. CONSIDERATION OF RMPU AMENDMENT SCHEDULE

Mr. Kavounas stated the Watermaster Board asked that Watermaster staff complete the required amendment to the Recharge Master Plan Update by December 2012, which is a few months in advance of when the court is expecting that amendment to be completed, which is October 2013. Mr. Kavounas stated this direction was given by the Watermaster Board one year ago and was done to get the process moving more rapidly, so that projects for the MZ3 area would get started more quickly. There has been good progress made in sections 1 through 4, of the total of 8 expected sections; however, at this point in time, staff feels the balance of work to be completed can't be totally finished by December. Mr. Kavounas stated a schedule has been created that would allow Watermaster to complete the necessary sections by the court appointed date of October 2013. That schedule has been presented and adopted by the three Pools and Advisory Committee, and is being recommended to this Board today for adoption. Mr. Kavounas stated by adopting this, it would actually change the action of the Watermaster Board that was made last December 2011. Mr. Kavounas stated there are views among our production parties that believe we can and should be doing more work than what is required in this amendment. Staff believes if that is the direction of those production parties, then staff will help them shape the recommendations and develop that, and then bring that back through the Watermaster process; noting that might require adopting a different schedule at that time, as well as a different cost. Mr. Kavounas stated right now Watermaster's obligation remains to the court to have this amendment finished with a certain list of deliverables by October 2013. Mr. Kavounas stated the schedule before this Board is intended to accomplish that by that time. Mr. Kavounas stated again, it is an aggressive schedule. Mr. Kavounas explained how this schedule will be worked through the process of accomplishment. A lot of work will be asked from Wildermuth Environmental Inc. (WEI), staff, and staff is asking for timely and short review periods from everyone that is interested or involved with this amendment. Mr. Kavounas stated in addition to this work, WEI is also going to be proceeding with the re-evaluation of the safe yield; this was due to the Watermaster Board in 2011, which has not been done. Mr. Kavounas stated WEI has updated the hydrologic model of the basin so that effort will be going on in parallel with the work plan.

Chair Kuhn inquired about the extension of work that might be done and if there is an estimate of when that will be discussed and who would be doing the discussing. Mr. Kavounas stated, for the most part, it will be the appropriators, and it is staff's intention to help them in any way possible; ultimately they need to drive that process through the Appropriate Pool.

Mr. Catlin inquired about the motion that the Non-Agricultural Pool made on this item which is referenced in the staff letter. Mr. Kavounas stated that is the manner in which the Non-Agricultural Pool creates its motions.

Motion by Pierson, second by Rogers, and by unanimous vote

Moved to approve the RMPU amendment schedule, as presented

C. CHINO BASIN WATERMASTER 2012-2013 ASSESSMENT PACKAGE

Mr. Kavounas introduced the Assessment Package item. Mr. Kavounas stated this item was approved by all three Pools and the Advisory Committee. Mr. Kavounas inquired if the Board wanted to see the presentation which was given to the Pools and the Advisory Committee. It was noted the Watermaster Board did not want to see the presentation again. Mr. Kavounas stated before the Board takes its vote, there is one other item that this Board should be made aware of. Mr. Kavounas stated on November 7, 2012 Watermaster received a letter from Three Valleys Municipal Water District (TVMWD), and a copy of that letter is available on the back table. Mr. Kavounas stated the TVMWD letter relates to the Pomona Credit. Mr. Kavounas stated the Pomona Credit is a credit that was determined and included in the Peace Agreement, and was set at a certain dollar amount to be credited to the City of Pomona over a period of thirty-years; this amount is approximately \$66,000 per year. This credit had been given to the City of Pomona, and everyone who paid assessments provided a proportional share for that

credit. Mr. Kavounas stated that under provisions of Peace II Agreement TVMWD willingly took on the payment obligation to provide that Pomona Credit to the City of Pomona, to be reviewed on a five-year basis afterward. Mr. Kavounas stated the five-year period is now up and the letter from TVMWD is notifying the Watermaster Board that TVMWD is electing to terminate their responsibilities, which is within their rights. Mr. Kavounas stated starting in 2013, since TVMWD has decided to opt out in accordance with Peace II Agreement, that credit will now have to be collected by all the Appropriators proportionally, starting with this assessment year 2012-2013. Mr. Kavounas stated Mr. Joswiak has prepared a table for this matter that shows the assessment which will be coming back to the individual producers prior to the end of the fiscal year.

Motion by Curatalo, second by Pierson, and by unanimous vote

Approve the of the Fiscal Year 2012-2013 Assessment Package as Presented, with Express Acknowledgment of the Treatment of the Topics as Described in the Staff Report Package, as presented

D. LEVYING REPLENISHMENT AND ADMINISTRATIVE ASSESSMENTS

Mr. Kavounas introduced this annual item and noted this resolution allows Watermaster to bill all the parties for their assessments.

Motion by Catlin, second by Lantz, and by unanimous vote

Approve to approve the Levying Replenishment and Administrative Assessments for Resolution 12-07, as presented

E. APPLICATION FOR RECHARGE

Chair Kuhn asked that Mr. Bowcock step down as a Watermaster Board member and address this Board as a Overlying Non-Agricultural Pool member and speak as he did at the Appropriative Pool and Advisory Committee meetings so that this Board can be provided with the same information, to assist in making a more informative decision.

Mr. Kavounas stated the item for consideration is the conditional approval for an Application for Recharge that was received by Watermaster as part of an application for a Local Supplemental Storage Agreement made by Vulcan Materials Company (VMC). The application was reviewed by staff and consulting engineer Wildermuth Engineering Inc. (WEI) and WEI has performed the required Material Physical Injury (MPI) analysis. WEI has concluded there is potential for MPI. Mr. Kavounas stated staff's recommendation comes from the motion made by the Pools last month which was to conditionally approve the application with the understanding that any discussion about storage would have to be put into the same status as all prior Storage Applications that have been received, and it would take its order in priority behind the other Storage Applications. The conditions for approval of the recharge would be to satisfy the site characterization studies which would be developed by WEI. Mr. Kavounas stated as part of the Watermaster procedures this item had to wait for a month to come to the Watermaster Board after the Pool's consideration. Last week staff presented this item at the Pool meetings for their information which contained the conditions that WEI believes would be appropriate for the site characterization studies.

Mr. Bowcock stated there was a lengthy discussion at the Advisory Committee meeting this morning. Mr. Bowcock stated he can answer any questions and noted as the applicant for the VMC we are happy to comply with conditions subject to the right to recharge, and to even meet or exceed those expectations.

Chair Kuhn stated he heard a lot at the Advisory Committee meeting and he noted he truly did not understand Fontana Water Company's (FWC) comments with regard to the issue of putting water in that has any contamination in it. Chair Kuhn stated since there are no representatives from FWC at this meeting can someone or Mr. Bowcock help him with the statements made by FWC or provide an interpretation of those comments.

Mr. Bowcock stated he did not want to speak for Mr. Whitehead or Mr. Young; however, it was certainly the intent of FWC to express their concern and frustration in the process, and the ambiguity of the requirements. Mr. Bowcock stated they did not like the fact that they did not understand what the applicant was going to be required to do, and at the same time they did not like the Watermaster process, and they also wanted to be part of the process since they have the most adjacent wells. Chair Kuhn stated he did not get the impression that FWC was against the issue, it was just that they had some concerns. Mr. Bowcock stated he also believed FWC was not against this project because he has had several conversations with them over this, but that they did have concerns and wanted some assurances. Chair Kuhn clarified that he would like that to be part of the record that this Board considered what the Appropriative Pool had as a question or concern.

Mr. Bowcock stated he thinks the question from FWC's perspective is valid and if Watermaster is going to engage in the activity of analysis of MPI, it should not be instantaneous or at the time of an application. Mr. Bowcock stated he believes that MPI is something that should be continuously analyzed by Watermaster in all aspects of all water projects that are approved by Watermaster. Mr. Bowcock stated with that said, it is to what degree Watermaster should or should not be involved in that activity. Mr. Bowcock offered further comment on Watermaster's responsibility and role in this matter in his opinion. Mr. Bowcock stated this application has been approved by all three Pools and by the Advisory Committee. Mr. Bowcock stated that the applicant intends to meet or exceed expectations on the MPI, which has set a certain standard as it relates to this organization. Mr. Bowcock stated with that standard being set now he believes there will be future implications set for other applicants to adhere to.

There was discussion if the Pools, Advisory Committee, and Watermaster Board should "accept" the application of what they are doing and not necessarily "approve" the steps; this was brought up by the City of Upland's representative.

Mr. Pierson stated what it was, is that we were looking at the first step of a multi-phase operation of allowing the applicant to come to us with a proposed work plan and study; there were some on the Advisory Committee expressing some hesitancy to use the word approval because if we approve it, it puts us into a position of potential exposure. Mr. Pierson stated the preference was more to look at the acceptance of their work plan and then move forward into workshops once they created their plan, and then monitor it on a more continuous basis. Mr. Pierson stated the Advisory Committee expects the applicant will produce a plan that will give the results of their studies; the guidelines will be worked out between WEI and the applicant, and the parties that are going to be involved in it. Mr. Pierson stated the Advisory Committee issue was "approval" versus "acceptance" of their study.

Mr. Bowcock discussed the conditions/expectations which were placed on his Recharge Application. Mr. Bowcock stated the ambiguity of the request actually had more of an impact on VMC because he is trying to satisfy the discontented and that is where his concern came from, which is why he keeps saying he wants to meet or exceed expectations. Mr. Bowcock discussed the approval process, the regulation of the water recharged, and Watermaster's accounting process of the applicant's recharge activity.

Mr. Kavounas offered clarification of some of the ambiguous terms. Mr. Kavounas stated staff's recommendation is to conditionally approve this application that will allow recharge. Mr. Kavounas stated the question of whether it is approved or accepted is the work plan that the applicant would do to prove to Watermaster's satisfaction that there is no harm that will come to the basin, and that harm is not just at the site but extends to the basin if contamination to the site were to go further downstream; that was FWC's concern. Recharge of any water will not take place until Watermaster is completely satisfied with the results that prove there will be no harm to the basin.

Ms. Rojo stated she is a consultant for FWC, and she wanted to review the concerns that Mr. Young was trying to convey at the Advisory Committee meeting. Ms. Rojo noted that FWC is very supportive of recharge projects, especially in the MZ3 area, which is where they have several adjacent wells. This recharge site is currently in the middle of FWC's service area and Mr. Young's largest concern that they wanted expressed is regarding the monitoring of any potential contamination. Ms. Rojo noted Mr. Young voted no on the VMC Application for Recharge this morning at the Advisory Committee meeting mainly because they really want to see the work plan first, and not because they don't want to encourage recharge.

Mr. Bowcock stated what he he believes that all project approvals are continuously subject to MPI analysis; this Recharge Application is being approved contingent upon meeting the criteria of no physical injury. Mr. Bowcock noted the bar has been set uniquely high for his proposal and he understands that all projects before and after this application will be approved subject to MPI analysis, which is continuous and ongoing.

Mr. Catlin offered comment on Mr. Bowcock's comment that of the bar being set uniquely high on this particular project.

A lengthy discussion regarding this matter ensued.

Counsel Slater stated that any party who wants to recharge water must come to Watermaster and seek a prior analysis as to whether the project is going to cause any MPI, there is no question as to whether the Board has jurisdiction to do this because there is a court order that says so. The Judgment covers water quality as a subject and it is referred to in the Optimum Basin Management Plan and there are countless examples of Watermaster making efforts to regulate or administer on behalf of water quality. Counsel Slater stated the subject of water quality and the activity is clearly within the Board's jurisdiction. Your responsibility is to determine whether or not the project will cause, or has a potential to cause, MPI. Counsel Slater stated there is a staff report and information from your engineer that says the project has the potential for causing MPI, and there is a subsequent report from staff and the engineer saying that the potential MPI can be eliminated through various measures. This Board is now being asked to make a conditional approval, which is not the final discretionary approval, and that is to be distinguished from what Mr. Bowcock is talking about, which is the continual review by Watermaster; this is being recommended to make a conditional approval subject to your further exercise of discretion based upon what is flushed out in the process that Mr. Bowcock is describing, and that Mr. Kavounas referred to. Counsel Slater stated that is what is next, and if the applicant and Watermaster are not satisfied as to the outcome of that process, then there is no right to proceed at that time, and counsel believes the applicant understands that. Counsel Slater stated following the activity, following further approval, Mr. Bowcock is also correct in that there is a court authorized duty to continue to monitor the activities to ensure that even if the analysis is sufficient to go forward, if something proves to be different than expected, it can be addressed in the future - this is only a request for conditional approval.

Chair Kuhn asked if there were any further comments or questions, and hearing none, he called for the motion.

Motion by Curatalo, second by Rogers, and by unanimous vote

Approve to approve the Vulcan Materials Company Application for Recharge, as presented

III. REPORTS/UPDATES

A. LEGAL REPORT

Counsel Slater stated there is nothing to report on for legal updates.

B. GM REPORT

1. RMP Compliance Annual Finding
Mr. Kavounas offered comment regarding the Recharge Master Plan Update Compliance Annual Finding that Watermaster is obligated to turn into the court on compliance with the 2010 Recharge Master Plan Update which relates to having adequate recharge capacity. Mr. Kavounas stated WEI will have a written report on this item next month.
2. Watermaster Annual Audit (Presentation will be given at WM Board meeting 12-20-12)
Mr. Kavounas stated the Watermaster annual audit is complete and there will be a presentation given by the auditors at the next Watermaster Board meeting on December 20, 2012.
3. Other Activities
No comment was made on this item.

IV. INFORMATION

1. Cash Disbursements for October 2012
No comment was made.

V. BOARD MEMBER COMMENTS

No comment was made.

VI. OTHER BUSINESS

No comment was made.

The regular open Watermaster Board meeting was convened to hold its confidential session at 11:34 a.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. GM Performance Evaluation
2. Potential Litigation

The confidential session concluded at 1:15 p.m.

No action was reported.

VIII. FUTURE MEETINGS AT WATERMASTER

Thursday, November 15, 2012	8:00 a.m.	IEUA DYY Meeting - CANCELLED
Thursday, November 15, 2012	9:00 a.m.	Advisory Committee Meeting
Thursday, November 15, 2012	10:00 a.m.	CB RMPU Steering Committee Meeting
Thursday, November 15, 2012	11:00 a.m.	Watermaster Board Meeting
Tuesday, November 20, 2012	9:00 a.m.	GRCC Meeting
Tuesday, November 27, 2012	9:00 a.m.	Groundwater Model Update, Scenario 1 – Recalibration Workshop
Thursday, December 6, 2012	10:00 a.m.	CB RMPU Steering Committee Meeting
Thursday, December 13, 2012	9:00 a.m.	Appropriative Pool Meeting
Thursday, December 13, 2012	11:00 a.m.	Non-Agricultural Pool Conference Call Mtg.
Thursday, December 13, 2012	1:30 p.m.	Agricultural Pool Meeting
Thursday, December 20, 2012	8:00 a.m.	IEUA DYY Meeting
Thursday, December 20, 2012	9:00 a.m.	Advisory Committee Meeting
Thursday, December 20, 2012	10:00 a.m.	CB RMPU Steering Committee Meeting
Thursday, December 20, 2012	11:00 a.m.	Watermaster Board Meeting

* **NOTE:** Watermaster Board Meeting changed from December 27th to **December 20th** due to the Christmas Holiday schedule

Chair Kuhn adjourned the Watermaster Board meeting at 1:16 p.m.

Secretary: _____

Minutes Approved: December 20, 2012